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CHILD SUPPORT ENFORCEMENT

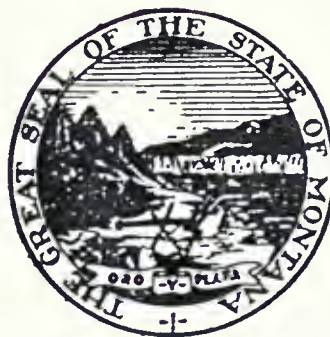
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PLEASE RETURN

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HELENA, MONTANA 59601

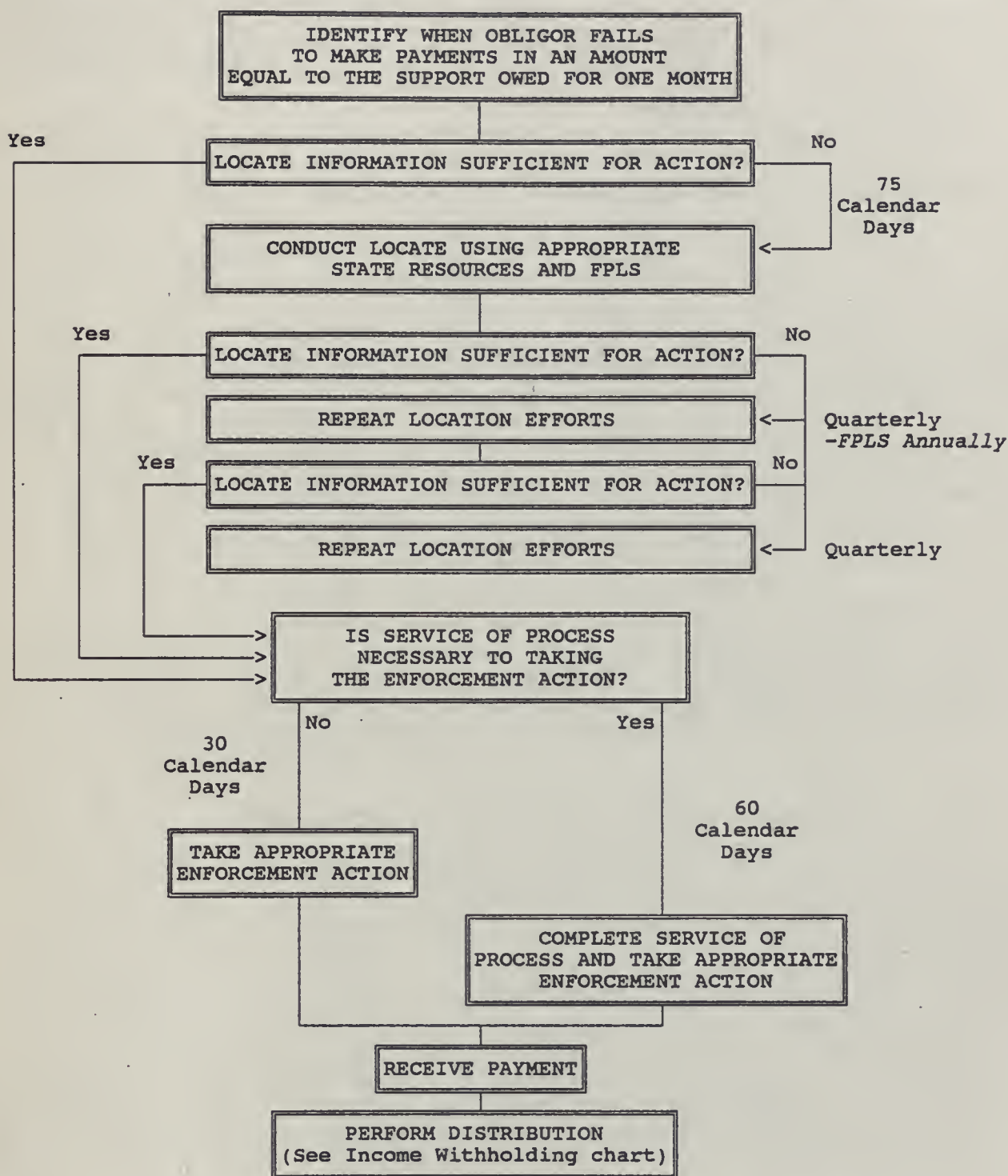
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ENFORCEMENT

(OTHER THAN INCOME WITHHOLDING AND TAX OFFSET)



ENFORCEMENT (Other than Income Withholding and Tax Offset)

- Take any appropriate enforcement action (except income withholding and Federal and State income tax offset) unless service of process is necessary within no more than 30 days of identifying a delinquency or other support related noncompliance with the order or the locate of the Obligor, whichever occurs later. [CFR 303.6(c)(2)]
- If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts documented), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related noncompliance with the order, or the location of the Obligor, whichever occurs later. [CFR 303.6(c)(2)]
- note: appropriate enforcement action may include support liens, credit bureau reporting and writ of execution.

Supersedes: CS 500.1 (6/20/80)

CS 500.1

Department of Revenue

DIVISION:

ENFORCING A SUPPORT
ORDER

subject:

Overview

CHILD SUPPORT ENFORCEMENT

POLICY:

Subsequent to the entry of an order or judgement establishing a support obligation, the obligor may fail to abide by its terms, making enforcement necessary. Orders may be enforced judicially or administratively. Except for the issuance of writs of execution based directly upon district court orders and judgments, judicial techniques tend to be cumbersome and slow, and should not be used when a speedier administrative remedy is available.

Once a court or administratively ordered support delinquency has been identified, enforcement should proceed using one or more administrative or judicial enforcement techniques. Consult your regional supervisor or CSEP staff attorney concerning any questions about enforcement in specific circumstances.

DISTRAINT, SEIZURE, AND SALE OF PROPERTY

1. Warrant for Dstraint - At the conclusion of every successful administrative action to establish or enforce a support obligation, Montana law (MCA § 40-5-241 and sections cited therein) allows a Warrant for Dstraint to be filed with the Clerk of any Montana District Court in the county in which the support obligor earns income or owns property (see Section CS 503.5). This filing creates a lien upon all real and personal property owned by the obligor in that county, and may be released only by the Department in writing (see Section CS 503.9).
2. Notice of Support Lien - The Notice of Support Lien is used to provide actual notice of the existence of the support lien created by the Warrant for Dstraint, and to advise persons, businesses, and institutions of government of

section:

ENFORCING A SUPPORT
ORDER

subject:

Overview

their obligations and liabilities under the law
(see Section CS 503.6).

3. Writ of Execution - Montana law requires that real and personal property (including money), whether distrained or not, may be seized only by the Sheriff of the county in which the property is located. This may only be accomplished through the use of a Writ of Execution issued by the Clerk of the District Court in which the Warrant for Distrain is filed (see Section CS 503.8).

INCOME TAX OFFSET

1. Montana Income Tax Offset - The state income tax refund of any obligor with a delinquent support order, or a "liquidated" support delinquency not reduced to a judgement or order may be intercepted (see Section CS 508.1). Funds are transferred to the CSEP and credited against the delinquent support amount. An administrative fair hearing is available to any taxpayer whose refund has been "offset" and who contests the legal and factual basis of the interception.
2. Federal Tax Offset - Federal law allows interception of federal income tax refunds, though this is limited to delinquencies reduced to judgments or orders (see Section CS 508.3). A special administrative review process for aggrieved taxpayers is available from the regional offices (see Section CS 508.4).

INCOME WITHHOLDING

Support obligations established by court or administrative order shall be enforced by administrative income withholding whenever

subject:

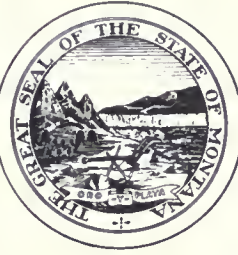
ENFORCING A SUPPORT
ORDER

section:

Overview

possible. It is used to collect current and future support and any accrued arrearages (see Sections CS 510.1 through 510.10 and Section CS 401.4). This remedy is or will soon become available in all 50 state and 4 territories. Processing of referrals to and from other jurisdictions is discussed in Section CS 540.2.

DEPARTMENT OF REVENUE
INVESTIGATIONS & ENFORCEMENT DIVISION
CHILD SUPPORT ENFORCEMENT PROGRAM



TED SCHWINDEN, GOVERNOR

MONTANA BUILDING, SUITE 407
503 1ST AVENUE NORTH

STATE OF MONTANA

(406) 761-7675

GREAT FALLS, MONTANA 59401

1 September, 1988

TO: All CSE Manual Holders

SUBJECT: NEW FORM - Enforcement Checklist

Attached is a copy of form CS-500.2 "Enforcement Checklist", which will be included in the CSEP Manual to aid caseworkers in their periodic review of CSE case records. It is hereby approved for immediate use. The 1985 amendments to Title IV, Part D of the Social Security Act require all states to have procedures in place for annual review of IV-D cases to determine the applicability of certain enforcement options. All the required enforcement options are available in Montana, although some of them may not be fully explained in the CSE Manual. Manual procedures are pending for those enforcement options.

The Enforcement Checklist is intended for use by all CSEB caseworkers. Whenever a case record is being reviewed, the applicability of the enforcement options in the checklist should be determined. If a case record under review contains no completed Enforcement Checklist, or if it has been more than 9 months since the date noted on the latest enforcement checklist, prepare a checklist, and insert it in the case record.

The Enforcement Checklist is prepared by noting the caseworker's name and the current date in the blank spaces indicated. Each enforcement option must then be reviewed to determine if it is applicable to the case. If not, check the "No" box next to that option. If applicable, check the "Yes" box, and take the appropriate case action. In questionable cases, consult the noted Section of the CSE Manual, or a CSE Staff Attorney. Upon completion, every line on the Enforcement Checklist will be checked "Yes" or "No".

Caseworkers may find the Enforcement Checklist useful for reference whenever a case record is reviewed. Due to the great number of enforcement options available, the checklist makes a succinct reference if kept handy.

The form has been numbered CS-500.2 in the CSEP manual. This places it before the enforcement remedies. A CSE Manual Section CS 500.2 with detailed procedures and instructions is pending.

A handwritten signature in dark ink, appearing to read "Dennis Shober".

DENNIS SHOBER, Bureau Chief

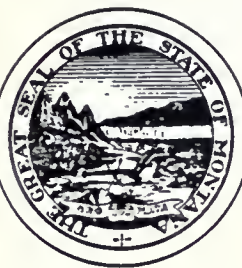
ENFORCEMENT CHECKLIST

For each of the following enforcement actions possible in Montana, check whether its use is appropriate or not:

Investigator's Initials: _____ Date: _____

- | Yes | No | |
|------------------------------|--------------------------|---|
| 1. ☐ | ☐ | Mandatory income withholding pursuant to 45 CFR 303.100 (See CSE Manual Sections 510.1 through 510.10). Verify status of arrears, modify or issue supplemental notice as needed. |
| 2. ☐ | ☐ | Interception of unemployment compensation benefits pursuant to 45 CFR 302.65 (See CSE Manual Section 302.1B). |
| 3. ☐ | ☐ | Contempt proceedings to enforce an existing court order if it can be shown that the support obligor had the ability to pay support but refused to do so (Consult a CSE Staff Attorney). |
| 4. ☐ | ☐ | Interception of state and federal income tax refunds pursuant to 45 CFR 303.102 and 45 CFR 303.72 (See CSE Manual Sections 508.1 and 508.3). |
| 5. ☐ | ☐ | Garnishment, mandatory military allotment, or similar proceedings, if the obligor can be brought under Montana's jurisdiction (Consult a CSE Staff Attorney). |
| 6. ☐ | ☐ | Proceedings to establish liens on real and personal property pursuant to 45 CFR 303.103 (See CSE Manual Section 503.7). |
| 7. ☐ | ☐ | Proceedings to seize real or personal property (Consult a CSE Staff Attorney). |
| 8. ☐ | ☐ | Proceedings to require the obligor to post bond or give security or other guarantee pursuant to 45 CFR 303.104 (See CSE Manual Section 508.5). |
| 9. ☐ | ☐ | Proceedings to enforce medical support obligations pursuant to 45 CFR 306.51 (See CSE manual Sections 520.1 and 520.5). |
| 10. ☐ | ☐ | Reports to consumer reporting agencies regarding the obligor's overdue support, pursuant to 45 CFR 303.105 (See CSE Manual Section 101.5). |
| 11. ☐ | ☐ | Application to use the federal courts of the United States and proceedings to enforce a support order pursuant to 45 CFR 303.73 (Consult a CSE Staff Attorney). |
| 12. ☐ | ☐ | Application for full collection of the delinquent child support obligation by the Secretary of the Treasury (Consult a CSE Staff Attorney). |
| 13. ☐ | ☐ | Interception of Montana Worker's Compensation Benefits (See CSE Manual Section 508.8). |
| 14. ☐ | ☐ | URESA or other interstate enforcement (See CSE Manual Sections 506 and 540.2). |

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

PO BOX 5955
HELENA, MONTANA 59604-5955

March 1, 1993

TO: All CSED Manual Holders

FROM: Gwen Kloeber, Policy and Training Supervisor *gk*

SUBJECT: New Manual Pages--CS 500.2, "Registration of Support Orders"

Attached are Manual pages setting out CSED policy and procedures for registration of support orders. The pages also contain new registration forms, and instructions for completing them. Please note, there are now three forms used to register orders: the application, the application cover letter, and the notice. These three forms replace the two you may currently be using, as shown in the table below. **Please destroy all copies of the old forms.**

<u>Name of Form</u>	<u>Old Form</u>	<u>New Form</u>
Application for Registration of Support Order	CS-405.3A (New 7/92)	CS-500.2A (New 3/93)
Letter to Person Requesting Registration	n/a	CS-500.2B (New 3/93)
Notice of Registration of Support Order	CS-405.3B (New 7/92)	CS-500.2C (New 3/93)

SEARCHS Coordination

The new forms will not be available on SEARCHS until Stage 2 of system implementation. Until that time Regional Offices should plan to produce the forms manually. Supplies of the forms will be distributed to each office as soon as possible after the distribution of these Manual pages.

(continued on reverse)

NOTE: While we are still producing the new forms manually, it is very important to remember to stamp the Regional Office address at the top of the Application. The Office of the Administrative Law Judge needs this information to send a copy of the Notice to the correct region.

Instructions for Manual Maintenance

Insert

CS 500.2, "Registration of Support Orders," March 1, 1993,
pp 1-12.

Interlineation Changes

CS 408.3 - Change all references to section CS 405 and forms CS-405.3A and CS-405.3B to "section CS 500.2," "form CS-500.2A," and "form CS-500.2C," respectively. These references occur on page 2 (one) and on page 8 (three).

CS 408.5 - Change all references to section CS 405 and forms CS-405.3A and CS-405.3B to "section CS 500.2," "form CS-500.2A," and "form CS-500.2C," respectively. These references occur on page 1 (one) and on page 4 (three).

Table of Contents Changes

Page 5 - Line out "reserved" information for subsection 500.2;
write in "Registration of Support Orders (3/1/93) pp 1-12".

Attachments

Department of Social and
Rehabilitation Services

section:
Enforcing a Support Order

CHILD SUPPORT ENFORCEMENT

subject:
Registration of Support Orders

POLICY:

The CSED is required to maintain a registry of all support orders which it issues. Other non-CSED orders may be filed with the registry as well. Registration allows the CSED to modify these non-CSED orders, and to take enforcement actions which were previously impossible to take with a "foreign" support order.

"FOREIGN" ORDER DEFINED--For purposes of registration, "foreign" does not mean an order from another country. A foreign order is an order issued by a district court of this state, a court of a sister state, or an administrative agency with a hearing function and process similar to the CSED's process. **If you have an order involving Native Americans, please consult your regional CSED staff attorney.**

The CSED must register orders at the request of the absent parent or the custodian, if the custodian was a party to the original support order. If the custodian was not a party to the original support order, the custodian cannot properly request registration unless:

1. There is a written assignment of support from the original custodian; or
2. The order is drafted to "follow the child," and is not specific to the original custodial parent.

The CSED may also request registration of a foreign support order. Once registered, the CSED may file an abstract of the order with the district court.

There are few requirements for registration:

1. The foreign order must be final. A child support order is "final" if it is not pending appeal, or the subject of a pending modification. Consult the regional CSED staff attorney if there is a question as to whether an

section:

Enforcing a Support Order

subject:

Registration of Support Orders

order is "final" for purposes of registration.

2. The issuing court or agency must have had subject matter jurisdiction. The foreign state's law must authorize that court or agency to issue child support orders.
3. The issuing court or agency must have had personal jurisdiction over the absent parent.

If an order is valid on its face, the law presumes that the issuing tribunal had full authority and jurisdiction to issue the order. If a foreign order is invalid on its face (for example, if service by publication is noted in the order), the CSED cannot register the order.

The CSED does not need personal jurisdiction over the absent parent to register a foreign support order. Registration is a ministerial act and not a "contested case" procedure. Thus, once the applicant satisfies the registration requirements, the CSED must register the order.

Once registered, the CSED may abstract the order to District Court. As any other CSED abstracted order, judicial enforcement remedies, such as writs of execution, are possible. However, the mere fact of registration does not necessarily give the CSED any jurisdiction for enforcement purposes.

The administrative law judge may vacate registration of a foreign order if, at a hearing to modify or enforce the order, the absent parent presents evidence that the foreign order:

1. is not final;
2. was issued by a court or administrative agency without authority to issue child support orders; or
3. was issued by a court or administrative agency without personal jurisdiction over the absent parent.

section:
Enforcing a Support Order

subject:
Registration of Support Orders

PROCEDURE:

Responsibility:

ACTION

Caseworker:

1. Upon receipt of a written request to register a support order, or upon a determination that a modification is proper or necessary for enforcement purposes, completes caption portion of form CS-500.2A, "Application For Registration of Support Order" and mails to requesting party, along with a copy of form CS-500.2B, "Letter to Person Requesting Registration," OR completes application on behalf of CSED.

Requesting Party/
Caseworker:

2. Completes and forwards original Application, along with a certified copy of support order to be registered, and certified copies of any modifications or entries affecting the support order to the Support Order Registry in the Office of the Administrative Law Judge. Retains one copy.

Hearings
Assistant:

3. Upon receipt, date stamps application. Checks application for completeness and correctness.
 - If acceptable, files in support order registry.
 - If not acceptable, notes omissions and errors on the application, and returns documents to Requesting Party/Caseworker.
4. Prepares form CS-500.2C "Notice of Registration of Support Order." Makes four copies. Mails one copy to clerk of court or administrative agency which originated the order. Mails copies of the notice and application to absent parent, custodian, and applicable CSED region. Retains original notice and application in Support Order Registry.

SEE FOLLOWING PAGES FOR SAMPLE FORMS AND INSTRUCTIONS

section:
Enforcing a Support Order

subject:
Registration of Support
Orders

INSTRUCTIONS:

Responsibility

Call Out Number

FORM CS-500.2A, "Application for Registration of Support Order"--Used to register foreign support orders with the CSED Support Order Registry.

.Caseworker/ Applicant

- 1 Enter the address of the Regional CSED office.
- 2 Enter the name(s) of the children to whom the order to be registered applies.
- 3 Enter the name of the custodian.
- 4 Enter the number of the IV-D case.
- 5 Enter the name of the absent parent.
- 6 Enter the State and County where the Notary Public is witnessing the document.
- 7 Enter the last known mailing address of all other parties to the support order.
- 8 Check the appropriate box. If the application will be signed by the CSED caseworker, check the first box, even though the action was requested by another party.
- 9 Enter the current date.
- 10 Print your name.
- 11 Print your mailing address.
- 12 Sign your name.

.Notary Public

- 13 Enter the state for which you are a Notary Public.
- 14 Affix your seal.
- 15 Sign your name.
- 16 Enter your county of residence.
- 17 Enter the date your notary commission expires.

Page 5 of 12

section:
Enforcing a Support Order

subject:
Registration of Support
Orders

7. If the application is made on behalf of a person or entity who is not a party to the original order, application is authorized by written assignment, or assignment by operation of law.

9
DATE

10
PRINT YOUR NAME HERE

11
PRINT YOUR ADDRESS HERE

12
YOUR SIGNATURE

SUBSCRIBED AND SWORN TO before me, a Notary Public for the State of
13, on the date written above.

(SEAL) 14

15
Notary Public
Residing at: 16
My Commission Expires: 17

section:
Enforcing a Support Order

subject:
Registration of Support Orders

INSTRUCTIONS:

Responsibility Call Out Number

FORM CS-500.2B, "Letter to Person Requesting Registration"--Used to provide instructions for completion of CS-500.2A, "Application for Registration of Support Order."

Caseworker:

- 1 Enter the address of Regional CSED office.
- 2 Enter today's date.
- 3 Enter the name and mailing address of the person requesting registration.

section:
Enforcing a Support Order

subject:
Registration of Support
Orders

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

①

Date: ② _____

③ _____

RE: Your request for registration of a non-CSED support order

Dear Applicant:

Enclosed is the form for registering a support order with the Montana Child Support Enforcement Division (CSED) Support Order Registry. You must complete the form under oath, and have a Notary Public sign and seal the form.

The CSED Regional Office completed the top portion of the form for you. You must fill in the state and county where the Notary Public is witnessing this document. For example, write in MONTANA and Fergus if you sign in front of a Notary Public in Lewistown, Montana.

You must attach a certified copy of the order you want to register to this form. Attach certified copies of any orders that modify the order, or any other entries which affect the support obligation.

The Support Order Registry may register only "final" orders. An order can be "final" even if its title has the word "temporary" in it. The CSED cannot register a support order which is the subject of a pending appeal or petition for judicial review. The CSED cannot register an order which is the subject of a pending modification.

At paragraph number 4, you must enter the last known mailing address of all other parties to the support order. This information is necessary so the Support Order Registry can tell those parties about registration of the support order.

At paragraph number 6, you must show your status. If you are the child's custodian, check the blank in front of "the custodian of the child(ren)." If you are the parent required to pay support, check the blank in front of "the absent parent."

If you are not a party to the original action, you may not be able to register the order. You may register an order if the named custodian assigned the support to you in writing. You may also register an order which directs payment to a person not specifically named.

CS-500.2B
(New 3/93)

section:
Enforcing a Support Order

subject:
Registration of Support Orders

For example, an order may direct payment to "Chris Doe." If you are not "Chris Doe," you must have a written assignment from Chris Doe to register the order. If an order directs payment to "Chris Doe, or any later custodian of the child," and you are a custodian of the child, you may request registration. The language to make an order "follow the child" like this varies.

Send your completed application, along with the attached support order(s) to:

Support Order Registry
Office of the Administrative Law Judge
Suite 2B, Arcade Building
111 N. Jackson
Helena, MT 59620

Please put enough postage on the envelope to assure prompt delivery.

If your order meets the requirements for finality and validity, the CSED will register it in the Support Order Registry. If it does not meet these requirements, the Support Order Registry will return the application to you.

If you have questions about the registration process, please contact the CSED Regional Office at the address in the heading of this letter.

section:

Enforcing a Support Order

subject:Registration of Support
Orders

INSTRUCTIONS:

Responsibility

Call Out Number

FORM CS-500.2C, "Notice of Registration of Support Order"--Used to inform parties, court, and CSED that foreign support order has been registered with the CSED Support Order Registry.

.Hearings
Assistant

- 1 Enter the name(s) of the children to whom the order to be registered applies.
- 2 Enter the name of the custodian.
- 3 Enter the number of the IV-D case.
- 4 Enter the name of the absent parent.
- 5 Enter the date support order was registered with CSED Support Order Registry.
- 6 Enter the name of court or administrative agency which originated the support order, the caption of order registered, case or cause number, the date of the order, and any other docketing information.
- 7 Enter the current date.
- 8 Sign your name.
- 9 Enter the date mailed.
- 10 Enter the name and address of the CSED Regional Office and Investigator, if known; the clerk or administrative agency that originated the support order, the absent parent, the custodian, and any other party to the original support order.
- 11 Sign your name.

section:
Enforcing a Support Order

subject:
Registration of Support Orders

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

IN RE THE SUPPORT OF:

_____ ^① Child(ren) Case No. _____ ^③	)))))	_____ ^② Custodian as of Notice Date _____ ^④ Absent Parent
---	--	---

NOTICE OF REGISTRATION OF SUPPORT ORDER

TO: Clerk of Court, Administrative Agency, Custodian, Absent Parent, CSED

PLEASE TAKE NOTICE that the support order described below has been registered with the Child Support Enforcement Division Support Order Registry on _____ ^⑤

^⑥

This order is registered under the authority of Montana Code Annotated § 40-5-271. A support order registered with the CSED Support Order Registry is treated in the same manner and will have the same effect as a child support order issued by the CSED. This may include enforcement by writs of execution and other appropriate remedies. A registered support order may also be subject to modification under MCA § 40-5-272 or 40-5-273. Modification under these statutes is limited to the issues of child support and health insurance. Custody, visitation and other issues cannot be addressed.

You may contest the registration of this support order in any proceeding to enforce or modify the order. Grounds for contesting the registration include: lack of subject matter jurisdiction by the court or administrative agency that issued the original order; lack of personal jurisdiction by the court or administrative agency over the party required to pay support; or a non-final support order.

_____ ^⑦
DATE

_____ ^⑧
SUPPORT ORDER REGISTRY

CS-500.2C
(New 3/93)

section:
Enforcing a Support Order

subject:
Registration of Support
Orders

CERTIFICATE OF SERVICE

This is to certify that I, a member of the staff of the Administrative Law Judge, did serve a true and correct copy of the foregoing "Notice of Registration of Support Order" on the persons listed below by regular U.S. mail, postage prepaid, this 9 day of 9, 1990:

Child Support Enforcement Division

By: 11

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
ENFORCING A SUPPORT ORDER

subject:
Administrative Enforcement
in Interstate Cases

SUPERSEDES: [new section]

REFERENCES: 42 U.S.C. §666(a)(14); MCA 40-5-202(1)

POLICY: Federal law requires that the CSED use "high-volume automated administrative enforcement" to respond to enforcement requests from other states. These requests are considered "quick enforcement" requests in that they are not associated with full interstate referrals or direct withholding actions. "High-volume automated administrative enforcement" means the use of automatic data processing to search various data bases maintained in or by the state of Montana.

The CSED may likewise request quick enforcement services from other states. When Montana works with another state to provide or receive this type of enforcement assistance, the case is not considered to be transferred to the caseload of the state providing the assistance.

At the time of this writing the CSED does not have the system capability to process mass requests; however, individual quick enforcement requests can be handled by the Interstate Region on a case by case basis, according to the procedures below. In this way the CSED uses SEARCHS automatic data processing capabilities to the same extent as they are used for in-state cases.

PROCEDURES:

RESPONSIBILITY ACTION

I. RESPONDING TO A REQUEST FROM ANOTHER STATE

Interstate
Caseworker

1. Upon receipt of a request from another state for assistance in enforcing a support order, reviews the request for necessary information. If information needed to pursue the enforcement is missing, contacts the sending state to obtain the information.
2. Opens the case on SEARCHS, using a special identifier to indicate a "quick enforcement" case; resolves the participants. Enters the case in a

section: ENFORCING A
SUPPORT ORDER

subject: Administrative Enforce-
ment in Interstate Cases

quick enforcement log kept manually or on system.

3. Processes the case as follows:
 - a. Monitors automatic locate interfaces, including searches of Montana drivers' license, employment security, and new hire data bases.
 - b. Determines whether enforcement is possible based on the results of step 3a above. If so, enters the necessary information on the SOS and SOD screens, and sets up the appropriate SEARCHS accounts. Issues any notices necessary to satisfy Montana due process requirements, taking into account any applicable due process actions already taken by the requesting state. Performs arrears enforcement and collection actions as appropriate.
4. Promptly reports the results of actions taken in step 3 to the requesting state.
5. When the quick enforcement processes in step 3 are completed, records the completion in the quick enforcement log, closes any accounts, and closes the case on SEARCHS. Retains the hard-copy case file for future reference. (SEARCHS locate matches and collections records will be retained on system for the closed case.)
6. If after the case is closed another quick enforcement request is received for the same case, reopens the case and begins again at step 1.

II. REQUESTING ASSISTANCE FROM ANOTHER STATE

Regional
Caseworker

1. Upon identifying a case in which another state may be able to provide enforcement assistance under this section, prepares and transmits a request to that state for administrative enforcement. The request should include
 - the name, address, social security number, date of birth, employer, and any aliases of the obligor, to the extent they are known;
 - any bank accounts or property known to be held or owned by the obligor;
 - a certified copy of the support order;
 - the amount of the monthly support obligation

section: ENFORCING A
SUPPORT ORDER

subject: Administrative Enforce-
ment in Interstate Cases

- during the period the debt was incurred;
an affidavit for the amount of the support
debt, or a certified copy of the applicable
Debt Computation Worksheet;
- a notarized statement that the CSED has
complied with all procedural due process
requirements applicable to the case.

Enters a SEARCHS case note for an outgoing quick
enforcement request.

2. Monitors the case for a response from the other
state, and acts on any information received.
Enters a SEARCHS case note indicating the results
of the quick enforcement request.



Department of Social and
Rehabilitation Services

section:

PAYMENTS

subject:

Debt Computation

CHILD SUPPORT ENFORCEMENT

POLICY:

After a current and future support obligation is established (administratively or by a court), non-payment on that obligation may require enforcement action. Before enforcement can take place, the exact amount owed must be determined so the obligor can be notified. Different methods of calculating this amount exist, and more than one method has been used in the history of the CSEB. This section specifies the currently acceptable methodology (for information on dealing with older cases using other methodologies, see BULLETIN CS 501.1-BUL).

DEBTS, CURRENT & FUTURE SUPPORT OBLIGATIONS, AND ARREARAGES

As used by the child support enforcement program, debt is an obligation to pay support (for a child or spouse). AFDC liability debt, for instance, is defined at MCA ' 53-4-248 and ' 40-5-221 by specifying that a payment of public assistance money made to or for the benefit of a dependent child creates a debt due and owing to the department by the natural or adoptive parents who are legally responsible for the support of the child by statute or court decree in an amount equal to the amount of public assistance paid.

Because AFDC payment amounts vary from case to case and from month to month, the exact amount of the AFDC liability debt due at any future point in time cannot be determined without doubt. For this debt to be collected, it must be fixed in a certain amount or liquidated. When this is done on an on-going basis, a current and future support obligation is established. This means that an obligor has been ordered to pay a specific amount of money periodically for support of another person.

When a child support debt is liquidated for a period of time in the past, the result is a judgment. This usually occurs in one of three ways: As a judgment of the District Court; as a determination of a CSE Hearing Officer; or by operation of law, based upon non-payment of a court-ordered current and future support obligation.

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During the course of a support action in District Court, the judge may order a lump-sum support amount to be paid for a specific time in the past. This order is final and may be enforced by the obligee or any assignee. The same thing may occur during an administrative action by the CSE to enforce a child support obligation. As part of an order to settle contested income withholding or other administrative enforcement, the Hearing Officer may determine an amount due for a prior period. Finally, under Montana law (MCA ' 25-13-204)), non-payment of current and future support ordered by a District Court constitutes an enforceable judgment for the unpaid amount without the need for notice or further hearing.

NOTE: In State v Frank, the Montana Supreme Court held CSE administrative support orders to a higher standard. Accruals under administrative support orders are not enforceable without subsequent notice and opportunity for hearing. For a discussion of procedural due process concerning administrative orders, see Section CS 510.10.

PRO-RATION OF AFDC BENEFITS PAID

The IV-D program was originally established to reimburse the state and federal governments for AFDC benefits paid to families eligible as a result of a non-supporting parent, and to remove the need for families to rely on AFDC when the absent parent can provide support. Based on this principle, the IV-D program considers total AFDC benefits to be paid for the benefit of the dependent child(ren). No part of the benefit is considered to be paid solely for the benefit of the custodial relative, but rather in direct or indirect support of the child(ren). This means that, for IV-D purposes, the amount of AFDC paid per child per month is calculated by dividing only the number of children into the AFDC grant for the month, without regard to other possible members of the AFDC household.

This principle is important when the children of one custodial parent (in a single AFDC household) are the legal responsibility of more than one absent parent. In that instance, the amount of the total AFDC payment

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to compare with each absent parent's obligation amount (and payments made or missed) is the *pro-rata* amount for the number of children in the household belonging to that obligor.

As an example, Jane Jackson is receiving AFDC for herself and her three children (John, James Jr., and Jeremy) in the amount of \$433 per month. John and Jeremy are the children of Jane's ex-husband Jack Jones, and James Jr. is the son of her current absent husband James Jackson. The amount of Jane's monthly AFDC benefit for which Jack is responsible is $\$433 \times 2 = \866 . The amount of Jane's monthly AFDC benefit for which James Sr. is responsible is $\$433 \times 1 = \433 .

INTERPRETATION OF COURT ORDERS

Although language describing support obligations is fairly uniform in CSE administrative orders, this is by no means the case in District Court orders or orders from other states' courts. Extreme caution must be taken to determine exactly what is meant by this language so the obligor is charged the correct amount. While a CSE Staff Attorney is the only safe source to aid in the interpretation of unusual or questionable orders, attention paid to a few specific components of orders will help in many situations:

1. Decree - Montana law (and the law of many other states) requires that a support order consist of three parts: Findings of Fact (in which the facts taken into account in the judicial decision are enumerated), Conclusions of Law (in which the application of law to the case is summarized), and a Decree (in which the exact terms of the order are specified). Many orders are not so carefully executed, however. Care must be taken to consult the Decree, rather than either of the two earlier parts, if one is available. It is also important to consult any Property Settlement which may be made a part of the order (directly or by reference).
2. Children - Multiple beneficiaries of child support payments are usually specified in one of two basic

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ways. Support is ordered in a specific amount "per child per month" (or other payment frequency), or "for the children". If fewer than the total children in the order are now residing in the (AFDC or NAFDC) custodial relative's household (or one or more of the children has reached the age of majority--see item 5 below), a lesser amount of the total support ordered may be enforceable for the IV-D case. In the former example, the amount per child is multiplied by the number of children in the recipient or applicant household to determine the total amount due for the case. In the latter example, the obligor is usually charged with the total amount of support, regardless of the number of children in the current household.

3. Effective Date - An obligor cannot be charged for support due under an order before its effective date (unless support is ordered retroactively or a lump-sum judgement is given for a prior period). While some orders set forth a specific effective date (e.g., "Support is to commence on the 1st day of June, 1988 and continue on the 1st day of each month thereafter."), many do not. CSE policy is to consider the effective date of such "unspecific" orders to be the first day of the month following the month in which the order was signed by the judge (even if the order was signed early in the month).
4. Period of Payments - While the frequency of payments will usually be clearly stated in the order (monthly, weekly, annually, percentage of earnings, etc.), care must be taken to observe special changes in payment such as a change in the amount of support due for a seasonally employed obligor, children reaching the age of majority, or a provision that no payment is due during visitation periods (not the case unless specified in the order). In addition, payment frequency should always be converted to monthly for purposes of completing form CS-501.1A, "Debt Computation Worksheet (a conversion table is contained with the form completion instructions, page 10).
5. Termination of the Order - A current and future child support obligation is usually to continue

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until an event or date specified in the order. If none is specified, Montana law terminates the obligation: 1) upon the death of the child, or 2) upon the emancipation of the child, which usually means the last month of payment is the month of the child's 18th birthday. Care should be taken to observe special provisions of the order such as continuation of the obligation past the child's 18th birthday if the child remains in school.

Again, any time you are at all unsure how a support order is to be interpreted, contact your Supervisor or a CSE Staff Attorney.

NAFDC DEBT ASSIGNMENT

In NAFDC cases, debt is assigned to the state for collection purposes only--all amounts collected are paid to the family. The exact amount of past due support assigned will depend upon the contract with the applicant. Normally, it will be the total amount due and unpaid from the inception of the court or administrative order, but this may be limited by the applicant or by the agency if the full amount cannot be verified. Please be aware of the differing procedures when the case is NAFDC through continued services.

AFDC DEBT ASSIGNMENT

Federal law (42 USC ' 602(a)(26) and regulation (45 CFR ' 232.11) and state law (MCA ' 53-2-613) require a recipient of AFDC benefits to assign all rights to receive current and past due support to the state. Federal regulations at 45 CFR ' 302.51(a)(4) allow states to retain a portion of money paid against those arrears accumulated prior to the receipt of AFDC. These collections can be used to reimburse a monthly AFDC grant amount which exceeds the current and future support obligation due in that month. The Montana Child Support Enforcement Program has chosen to adopt a limited version of this policy.

For example (see page 7): Effective May of 1989, a support order is established in the amount of \$200 per month and the obligor begins paying. Two months later,

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hours are cut back at work and the obligor stops paying. The following month, the family makes application for and is granted AFDC benefits of \$286 per month and the case is referred to CSED. In the first month of AFDC eligibility, the obligor pays again, but then stops paying again.

By the end of October, the CSED has established income withholding (and grants a minimum hardship on the arrears due based on the obligor's limited income). Payments of \$200 per month current support and \$25 per month on arrears are received the following month, and for the next 3 months. At the end of February, the family reconciles and closes off AFDC. In The ex-recipient asks that CSE services be discontinued as the family has reunited.

Two month's support has not been paid during the time the family received AFDC benefits, and \$100 of that has been recovered. More AFDC has been paid to the family, however, than the current support due in that period, or since the inception of the order. The program could, by law, assume some or all of any arrears due the family prior to AFDC receipt to help it recoup the "unreimbursed AFDC grant amount."

However, in this era of welfare reform the CSED has chosen to limit the amount it can collect and retain to the total amount of current support due under the court or administrative order for the months AFDC benefits were paid. This amount will always be the LESSER of:

- the total amount of AFDC paid for the obligor's child(ren); or,
- the total amount of current support due for the child(ren) during the months AFDC was received.

Therefore, in the example cited above, we may not retain more than \$300 (\$1,400 current support owing for the period when AFDC was being paid minus \$1,100 collected). The \$200 arrearage due the obligee (from the period prior to AFDC payments began) would have been collected (and paid to the family) if AFDC benefits had continued long enough. Now that the family has reunited and requested case closure, however, that collection becomes unnecessary.

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NOTE: For a more complete discussion of the distribution of current and future support payments and arrears payments when received, including the handling of overpayments and disregards, refer to section CS 700.

Nearly endless variations may occur in the combination of monthly support obligation, AFDC grant amount, and the current and future support and/or arrears collections actually made. Application of a single fundamental principle of partial assigned debt calculation will resolve most situations:

The state may never retain support collected nor accrue debt in excess of the AFDC benefits paid, or in excess of the current and future support obligation due WHICHEVER IS LESS. When unusual situations or questions arise, consult your supervisor or the Support Payments Unit.

PERIOD OF DEBT CALCULATION

Based on recent program discussions, two different standards may be used in determining the completeness of debt calculation in a CSED case: one for cases first entering the program when the family begins to receive AFDC benefits and one for NAFDC entry cases.

- 1) Because of program decisions on AFDC debt assignment, debt owed under an existing order in new AFDC/IV-D cases will be initially calculated only from the first month AFDC was received (despite the fact the order may have pre-existed that date).
- 2) Upon the termination of AFDC benefits, the entire debt will be calculated (thereby meeting the NAFDC requirement to enforce/collect any and all debt owed the obligee).

NOTE: Although a family is not entitled to receive and retain current child support payments while receiving AFDC benefits, payments received by CSE and applied against obligee arrears are to be paid immediately to the family and reported to the Eligibility Technician responsible for the case.

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WHEN DEBT COMPUTATION MUST BE ACCOMPLISHED

Another major issue in this process is whether debt collection activity should vary based on the AFDC status of a particular IV-D case. If a case first enters the program in AFDC status, total debt will not be calculated and collection of arrears will still occur only for the debt accrued during the months in which AFDC has been paid. Supporting this policy is the fact that the obligee's arrears may not be negotiated at that point, which largely eliminates the possibility of lump sum settlements.

Only in the case of purely NAFDC applications or after a case has been both AFDC and NAFDC (and total debt has been calculated) should collection of all arrears be attempted. Debt computation is required any time a support action is commenced requiring notice to the obligor of amounts owed. This may occur:

- Prior to preparation of a Notice of Intent to Withhold Income (see Section CS 510.2) or a Supplemental Notice of Intent to Withhold Income (see Section CS 510.10)
- Prior to certification of a case for state or federal income tax refund offset (see Section CS 508.3)
- Prior to any judicial enforcement action
- Prior to referral to another state (or other agency such as the IRS for full collection services) for enforcement services
- As a part of the resolution of Daily Overpayments Listing items (see the CSE System User's Handbook, 5.2.20) when CSE System arrears show zero balance, but arrears payments continue to be received
- On request of the obligor, but usually no more than once annually).

Recent system changes and agreements with the IV-A program will allow payment to the family of any obligee arrears collected during the months AFDC is granted.

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The AFDC office must be notified to expect the household to receive the income.

IMPLEMENTATION

Different methods of arrearage accumulation have been used on existing cases and wholesale recalculation of arrears in all CSED cases would cost an enormous amount of staff. Therefore this policy is only to be applied prospectively on debt not already reduced to judgment or agreement. In addition, cases containing "unliquidated" debt (that not reduced to a court or administrative judgment) should have the policy applied only as they are "discovered" (picked up for work for some other reason). Careful case notation is necessary to insure cases can be recognized in the future as having had the policy applied.

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[illegible]

section:

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subject:

Debt Computation

INSTRUCTIONS:

Responsibility	Call Out Number	ACTION
----------------	-----------------	--------

FORM CS-501-1, "Debt Computation Worksheet"--used to record monthly amounts due, paid, and owing for purposes of calculating arrears.

.Caseworker/
Typist

- 1 Enter the IV-D case number.
- 2 Enter the obligor's name.
- 3 Enter the obligee's name.
- 4 Enter the page total for each column from the prior page, if any.

NOTE: This will be the case total for each column for the period prior to the first month indicated on this (top) page.

- 5 Enter each month and year of the debt calculation period.
- 6 For each month and year of the debt calculation period, enter the full or pro-rated amount of AFDC actually paid to or for the benefit of the obligor's children. (In multiple obligor situations, divide the total AFDC grant amount by the total number of children, then multiply times the number of children for this obligor.)
- 7 For each month and year of the debt calculation period, enter the monthly amount of current support ordered which was due to the state because AFDC benefits were paid.

NOTE: If the obligor's wages or other income are paid other than monthly, multiply the amount paid times the factor from the Income Conversion Table to convert it to a monthly amount (in accord with OCSE-AT-76-5).

<u>How Often Paid</u>	<u>Conversion Factor</u>
weekly	4.345
bi-weekly/every other week	2.173

PAYMENTS

DEBT COMPUTATION

- 8 For each month and year of the debt calculation period, enter the monthly amount of current support ordered which was due to the obligee.
- 9 For each month and year of the debt calculation period, enter the TOTAL amount of the support payment received.
- 10 For each month and year of the debt calculation period, enter the amount of that month's total support payment actually retained by the state.
- 11 For each month and year of the debt calculation period, enter the amount of that month's total support payment actually sent to the obligee.
- Do not include disregard payments or money paid against obligee arrears and held until AFDC benefits are no longer received. Do include "in-excess-of" payments (see CS Manual Section 700).
- 12 Enter the total for each column, including PRIOR BALANCE figures.
- NOTE: This will be the case-to-date total for each column for the entire period of the debt computation.
- 13 Enter the current date.
- 14 Enter the beginning and ending dates of the entire debt computation period (all pages).
- 15 Enter the amount of support still due and owing to the obligee. This is to be calculated from the TOTALS row by subtracting PAID TO OBLIGEE from the TOTAL SUPPORT DUE OBLIGEE (insuring that appropriate adjustments are made to TOTAL SUPPORT DUE OBLIGEE as indicated in item 15).

PAYMENTS

DEBT COMPUTATION

- 16 Enter the total amount of unpaid support due to the state. This is to be calculated from the TOTALS row as follows: the sum of TOTAL SUPPORT DUE STATE minus RETAINED BY STATE, unless the AMOUNT OF AFDC PAID is less than the TOTAL SUPPORT DUE STATE.

In this latter case, the amount of unpaid support due to the state is the AMOUNT OF AFDC PAID minus the RETAINED BY STATE.

NOTE: If the AMOUNT OF AFDC PAID (rather than the TOTAL SUPPORT DUE STATE) is used to calculate the unpaid support due to the state, all "excess" support due under the court order should be added to the TOTAL SUPPORT DUE OBLIGEE.

- 17 Enter the total amount of support still due and owing from the obligor (item 15 plus item 16).
- 18 Enter the numbers of the current Debt Computation Worksheet page and the total number of pages.

NOTE: For convenience in sending payment records to other states or jurisdictions, a certification statement is printed on the reverse of this form. This need only be completed and notarized when required by the receiving court or state.

Department of Revenue

section:

PAYMENT PROCESSING

CHILD SUPPORT ENFORCEMENT

subject:

PAYMENTS RECEIVED IN
FIELD OFFICES

INFORMATION:

Procedures are presented for handling and safeguarding collections received in the field office.

GENERAL RULE:

When the field office receives payments, either delivered or mailed, the obligor is notified to send all payments directly to the DEPARTMENT OF REVENUE, P.O. BOX 5955, HELENA, MT 59604.

INTERNAL CONTROL:

The following are designed to accomplish effective internal control in each field office.

RECEIPTING -- Two employees sign each receipt for coin or currency. EXCEPTION: When two employees are not available, payor and receipting employee sign.

DEPOSITING -- Generally speaking, the employee receipting should not be the same one who makes the deposit.

FREQUENCY OF DEPOSITS:

All monies received are deposited with a depository approved by the State Treasurer's Office each day when the accumulated amount of coin or currency exceeds \$100.00 or the total collections exceed \$500.00 (MOM VOL. II, 2-1210.22).

PROCEDURE

Responsibility

ACTION

PROVIDING RECEIPT TO PAYOR

. CSE Employee

1. Prepare, in triplicate, receipt form CS-245 (See FMD CS 501.3A).
2. Distribution --
 - . Original to payor

section:
PAYMENT PROCESSING

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PAYMENTS RECEIVED IN FIELD OFFICES

- . Copy 1 to SPU
- . Copy 2 retained by field office

PROCESSING CHECKS WITH RESTRICTIVE ENDORSEMENT

1. Stamp all checks with restrictive endorsement as soon as they are received. (MOM VOL. II, 2-1210.21)
2. Complete receipt form CS-245 and attach SPU copy to check.
3. Forward all checks to DOR Audit and Accounting, on a daily basis.

MAKING DIRECT DEPOSITS

1. Complete bank deposit slip in triplicate identifying payor by name for each transaction.
2. Distribution --
 - . Original -- to bank with deposit
 - . Yellow ---- to SPU with CS-245 attached
 - . Pink ----- retained in deposit book and bank deposit receipt attached

PROVIDING A SAFEKEEPING FACILITY FOR COLLECTIONS

1. Store collections in a locked box appropriately secured (MOM VOL. II, 2-1210.25).
2. Maintain a record of office personnel having knowledge or possession of keys to the device in which collections are stored (MOM VOL. II, 2-1210.26)

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CHILD SUPPORT ENFORCEMENT	subject: COMPLETING RECEIPT FORM CS-245

POLICY: Receipt all payments received in the field office. Receipts are prenumbered and a record of receipts issued is to be maintained.

PROCEDURE

Responsibility

ACTION

REQUIREMENTS WHEN COMPLETEING CS-245

- | | |
|---------------|---|
| .CSE Employee | <ol style="list-style-type: none"> 1. Enter name of person making payment 2. Enter date receipt is issued 3. Enter payor's address 4. Enter amount collected 5. Indicate type of payment received <ul style="list-style-type: none"> . If it's a check or money order, indicate the number 6. Signature of employee(s) completeing receipt <p><u>"FOR AGENCY USE ONLY" TO BE COMPLETED AFTER RECEIPT HAS BEEN ISSUED TO PAYOR</u></p> <ol style="list-style-type: none"> 7. Enter date the collection was sent to Helena 8. Enter the case number of the applicable case 9. Enter the client/receipient name 10. Enter the region/county code of the case 11. Enter account type(s). If more than one account type, indicate how much is applied to each account type. |
|---------------|---|

section:
PAYMENT PROCESSING

subject:
COMPLETING RECEIPT FORM CS-245

- 01 - AFDC
- 02 - AFDC Arrears
- 03 - NAFDC
- 04 - NAFDC Arrears
- 05 - Foster Care
- 06 - Foster Care Arrears
- 07 - Terminated AFDC
- 08 - Terminated AFDC Arrears (Due Client)

12. Circle payment source

- RP - Regular Payor
- WE - Writ of Execution
- NL - Notice of Lien
- OT - Other
- UR - URESA
- PL - Property Lien
- LS - Lump Sum
- GR - Grant Reimbursement
- BN - Bonding

CS-245	RECEIPT	(NUMBER)
Received From: _____	(1) _____	Date: _____ (2) _____
Address: _____	(3) _____	
Amount: _____	(4) _____	\$ _____ (4) _____
____ Check # _____	(5) _____	
____ Cash _____	(5) _____	
____ MO # _____	(5) _____	BY: _____ (6) _____
		_____ (6) _____
<u>FOR AGENCY USE ONLY</u>		
Date sent to Helena _____	(7) _____	Case # _____ (8) _____
Payee _____	(9) _____	
Region /County _____	(10) _____	Account Type _____ (11) _____
Payment Source (12)	RP WE NL OT UR PL LS GR BN	

Department of Revenue

SECTION:

COLLECTION

SUBJECT:

Collection Report
OCSE-CR-1

CHILD SUPPORT ENFORCEMENT

OCSE-CR-1: CHARACTERISTICS AND PURPOSE--This report is used to notify each county welfare department of collections received on current support obligations for AFDC recipients in that county. The county welfare department indicates those cases for whom assistance is to be (or was) terminated. The Support Payments Unit uses the information provided by county welfare to distribute "in lieu of" and "in excess of" payments.

DEFINITIONS: IN LIEU OF--A payment sent to the obligee whose AFDC grant was closed due to the child support collection. The entire amount of the collection for current support is sent to the obligee.

IN EXCESS OF--A payment sent to the obligee whose AFDC grant was closed due to reasons other than the child support collection. The amount of the collection greater than the public assistance grant is sent to the obligee.

RELATED REPORTS: OCSE-CR-2--A monthly list of all collections made. (See FMD CS 502.2)

OCSE-CR-3--A monthly list of collections which the computer was unable to credit to an absent parent's account. (See FMD CS 502.3)

PROCEDURE:

Responsibility

ACTION

.Support Pay-
ments UnitNOTIFYING COUNTY WELFARE OF AFDC CASE COLLECTIONS

1. Request the OCSE-CR-1 Report according to the procedure in the Support Payments Manual, Chapter 700.
2. Send each CSEB field office the OCSE-CR-1 Reports for the counties served by that office.

SECTION:

COLLECTION

SUBJECT:

Collection Report
OCSE-CR-1

.CSE Collection
Staff

3. Inspect the OCSE-CR-3 Report to see if one of your accounts has been listed there.
 - A. If none of your collections appear on the OCSE-CR-3, send the OCSE-CR-1 to the appropriate county.
 - B. If one or more of your collections appear on the OCSE-CR-3, transfer the information to the OCSE-CR-1 for the appropriate county. Complete those items identified as ⑤ ⑥ ⑦ ⑧ and ⑨ in the sample shown here. Forward the corrected OCSE-CR-1 to the appropriate county welfare office.

.County Welfare 4. Complete the items identified as ⑩ ⑪ ⑫ ⑬ ⑭ and ⑮ in the sample shown here. Return the Collection Report to the CSEB field office in your area.

.CSE Collection
Staff

5. Review the information provided by county welfare. Request clarification on unclear or incomplete statements.
6. Make changes in your automated accounts receivable file according to the information from county welfare.
7. Return the OCSE-CR-1 Report to the Support Payments Unit by the 25th of the month following the month of collection.
8. Complete the items identified here as ⑯ ⑰ ⑱ and ⑲. These items are part of the Distribution function. See Chapter 600 of this manual and Chapter 700 of the Support Payments manual.

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COLLECTION

SUBJECT:

Collection Report
OCSE-CR-1

DEER LODGE COUNTY		STATE OF MONTANA		CHILD SUPPORT ENFORCEMENT UNIT		SIGNED		COUNTY WELFARE DIRECTOR OR AGENT		CHILD SUPPORT OFFICE		DISTRIBUTION		JUDGER	
PAYEE	SSN	DATE	ALIBI	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
RIIA	516	7	DANIEL	U	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00
MARGARET	570	9	NICHOL	J	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
LORRAINE	517	0	CLAYTON	J	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00
GEORGE	517	8	BEN	J	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
MAHLYS	517	5	CARL	C	193.00	193.00	193.00	193.00	193.00	193.00	193.00	193.00	193.00	193.00	193.00
TRILHESA	516	2	ALAN	L	400.00	400.00	400.00	400.00	400.00	400.00	400.00	400.00	400.00	400.00	400.00
JANETTE	536	7	JUDY	J	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00
CARLUITA	558	3	KOETHI	C (US)	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00
JANET	517	3	KATILK	D	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00
JANL	516	9	CHRIS	S	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00
PATRICIA	517	7	LEURKE	E	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00

June 15, 1981

SECTION:

COLLECTION

SUBJECT:

Collection Report
OCSE-CR-1

INSTRUCTIONS:

- | Responsibility | Call Out Number | ACTION |
|-------------------------|---|--|
| .Computer | ① | Report Number. |
| | ② | Collections by county of AFDC recipient. |
| | ③ | Month collections were received by SP Unit. |
| | ④ | Date for return of OCSE-CR-1 to SP Unit. |
| | ⑤ | Obligee name (i.e., AFDC recipient's name). |
| | ⑥ | Obligee Social Security Number. |
| | ⑦ | Obligor name (i.e., Absent Parent's name). |
| | ⑧ | Child Support monthly amount due. |
| | ⑨ | Amount of collection on current support. (Amounts paid greater than current--See OCSE-CR-2.) |
| .Eligibility Technician | ⑩ | YES, if grant is to be (or has been) closed; or NO, if AFDC grant is to remain open. |
| | <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 5px; margin-right: 10px; text-align: center;"> <p>Note: </p> </div> <p>If Item ⑩ is YES, complete items ⑪ ⑫ ⑬ and ⑭.</p> </div> | |
| | ⑪ | 1-Due to Support, if the Child Support collection is the cause for grant closure.
2-(reason for closure), if other reasons cause grant closure. |
| | ⑫ | Indicate the AFDC payroll type. |
| | ⑬ | Enter the effective date of grant closure. |
| | ⑭ | Enter the amount of the AFDC grant amount for the same month as the month of collection. |
| .County Director | ⑮ | Please sign the report. |
| .CSE Staff | ⑯ | ⑰ and ⑱ Distribution Amounts. |
| | ⑲ | 1 = AFDC case not closed; 2 = Interim or the grant is closing in a future month for any reason; 3 = NAFDC or no AFDC grant in mo. of collection. |

Department of Revenue

SECTION:

COLLECTION

CHILD SUPPORT ENFORCEMENT

SUBJECT:

Delinquency Report -
Not Billed

CASES NOT BILLED: "DELINQUENCY REPORT - NOT BILLED"--Report 64-562.3, produced monthly highlighting those cases with a cumulative arrearage over \$100.00 but which were not sent delinquency notices.

Note: These cases were not sent notices because they have been designated as "Do Not Send Bill" on the master file or the address is not complete.

ITEM EXPLANATIONS:

- ① This item is the Report No. of the 'Delinquency Report.'
- ② This item is the report date for which the delinquency notices apply.
- ③ Region/County, Collecting Court or County, or FIPS--This item is the number and name of the court or county to which the cases that follow belong.
- ④ ABSENT PARENT INFORMATION--This item lists the Absent Parent's name and address.
- ⑤ SOCIAL SECURITY NUMBER--This item lists the Absent Parent's Social Security Number.
- ⑥ FAM--This item lists the Multiple Family Code if applicable to this case.
- ⑦ AMOUNT OF ORDER--This item reflects the amount of the order that the Absent Parent is required to pay.
- ⑧ FREQUENCY OF ORDER--This item reflects the frequency the order in Item 7 must be paid: 1 = Weekly; 2 = Monthly.
- ⑨ MONTHLY AMOUNT DUE--This item reflects the monthly amount of support that the Absent Parent is required to pay. For accounting purposes, weekly orders are extended by multiplying the amount of the order in Column 7 by 4.345. For Federal reporting requirements we must calculate support on a monthly basis and this is the figure given us for extending weekly orders.
- ⑩ COLLECTED FOR CURRENT MONTH--This item indicates the amount collected from the Absent Parent for payment of the current month's support obligation.
- ⑪ DELINQUENCY AMOUNT--This item indicates the amount the Absent Parent owes in order to meet the current month's support obligation (Column 9 - Column 10 = Column 11).
- ⑫ ARREARAGE PAYMENT--This item indicates the amount the Absent Parent paid towards his cumulative arrearage.
- ⑬ CUMULATIVE ARREARAGE--This item reflects the Absent Parent's cumulative arrearage as of the date of this report.
- ⑭ TYPE CASE--This item indicates whether a case is URESA or NON-URES.
- ⑮ CALC INCENTIVE--This item indicates if the court or county identified with this case receives an incentive.

SECTION:

COLLECTION

SUBJECT:

Delinquency Report -
Not Billed

[illegible]

Department of Revenue

SECTION:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

CHILD SUPPORT ENFORCEMENT

SUBJECT:

Model

Summary: Included are general steps to use when an obligor pays or fails to pay his child support obligation.

TYPES OF
OBLIGORS:

REGULAR PAYERS--if an obligor makes correct regular payments, no enforcement action is necessary. Use the collection report to confirm payment.

NON-REGULAR PAYERS (EMPLOYED)--if an obligor fails to, or refuses to, meet his support obligation and is a wage earner, seek a wage assignment.

NON-PAYERS WITH IN-STATE ASSETS--If an obligor does not meet his current support obligation, or refuses to pay off an arrearage, then seek a warrant of distraint.

OUT-OF-STATE NON-PAYERS/NO IN-STATE ASSETS--Administrative civil enforcement is not possible. Some other type of civil enforcement is necessary.

NOTE: FOR SITUATIONS NOT DESCRIBED ABOVE--check with your Child Support Regional Supervisor.

Department of Revenue

section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject:

Statutes of Limitations
Reviving Paternity Actions

CS BULLETIN

TO: All Manual Holders

DATE: September 1, 1988

Introduction: In the past four years, Montana law has set three different time limits for filing IV-D paternity actions. Prior to October 1, 1985, paternity petitions had to be filed with a court within three years after the birth of a child whose parentage was not presumed. From October 1, 1985 through March 18, 1987, paternity petitions could be filed up to 2 years after the first application for IV-D services or AFDC benefits was made, without regard to the age of the child. Beginning May 19, 1987, paternity petitions may be filed at any time prior to the child's 18th birthday. Naturally, these changes have caused confusion among members of the public, the bar, and even within the CSEB.

The Director of the Department of Revenue, at the request of the CSEB, asked Montana's Attorney General for his opinion as to whether the 1987 amendment to the paternity statute of limitations "revived" cases barred by the previous statutes of limitation. The Attorney General's Opinion, issued July 19, 1988, was that under Montana's constitution they were not. This means that IV-D cases previously closed due to the paternity statute of limitations must remain closed, and open IV-D paternity cases barred by either of the previous statutes of limitation must be closed immediately. Once a statute of limitations has run, the cause of action is forever extinguished, and no enforcement action can ever be taken. When reviewing a case in which paternity is not presumed, and the alleged father is within the borders of the State of Montana, use *both* of the following tests to determine if it is barred by a previous statute of limitation.

Effective

Date: May 19, 1987

PROCEDURE:

September 1, 1988

Page 1 of 3

section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject:

Statutes of Limitations
Reviving Paternity Actions

PROCEDURE:

Responsibility ACTION

.Caseworker/
Supervisor

1. Reviews the case file record and determines the date of the first IV-D application and date of birth of the child(ren) whose paternity is in question.
 - a. If the first IV-D application was made *on or after March 19, 1985*, the paternity statute of limitations is not a problem, so long as the child is under 18 years of age on the date of case review. Proceed with paternity establishment in accordance with the procedures set forth in Manual Chapter CS 600; but,
 - b. If the first IV-D application (AFDC or NAFDC) was made *on or before October 1, 1985*, and no petition to establish paternity was filed in court on or before the child's *third birthday*, the case must be immediately closed in accordance with the procedures set forth in Manual Section cs 201.5; or,
 - c. If the first IV-D application (AFDC or NAFDC) was made *between October 1, 1985 and March 18, 1985*, and no petition to establish paternity was filed in court within *two years* from the date of the first IV-D application, the case must be immediately closed in accordance with the procedures set forth in Manual Section cs 201.5.

NOTE -- OUT OF STATE OBLIGORS: If the obligor is not within the borders of the State of Montana, contact the URESA information agent in the State where the alleged father is located. Determine whether the case is barred by a statute of limitations in that state. If not, send a paternity URESA to the appropriate jurisdiction. If it is barred, the case must be closed. Whenever the alleged father's state of residence changes, the case should be reviewed to determine if it is barred

section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject:

Statutes of Limitations
Reviving Paternity Actions

by a statute of limitations in the new state. This is necessary because the law of the responding jurisdiction is applied in all URESA cases. Most States will not have a problem with paternity statutes of limitation.

NOTE: -- TOLLING THE STATUTE: A statute of limitations ceases to run (is "tolled") when a petition for paternity is filed in a court of appropriate jurisdiction. Do not close a case because of a statute of limitations if a paternity action has ever been filed. If you discover that a petition has been filed, consult a CSE Staff Attorney to determine whether the case can be pursued.

NOTE -- PRESUMPTION OF PATERNITY: A statute of limitations does not run while a presumption of paternity exists. Consult CSE manual section 601.1 to determine if a presumption of paternity exists or ever existed. If so, consult a CSE Staff Attorney to determine whether the case can be pursued.

If you have any questions or comments concerning statutes of limitation, please contact a CSE Staff Attorney.

section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject:

Statutes of Limitations
Reviving Paternity Actions

PROCEDURE:

Responsibility ACTION

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Supervisor

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section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject:

Statutes of Limitations
Reviving Paternity Actions

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If you have any questions or comments concerning statutes of limitation, please contact a CSE Staff Attorney.

Department of Revenue

section:
SPECIAL ENFORCEMENT
CONSIDERATIONS

CHILD SUPPORT ENFORCEMENT

subject:
Statutes of Limitation

POLICY:

At any time during the support establishment and enforcement process the obligor may raise the statute of limitations as a defense. Several such statutes apply to the activities of the Child Support Enforcement Program, but because they constitute an "affirmative defense", they need not be considered in preparing Administrative Notices, Writs of Execution, or tax offsets. It is preferable to wait for the obligor or his attorney to object to the arrearage calculations before attempting to determine whether a statute of limitations prevents enforcement. If no objection is raised, enforcement may proceed in the usual manner.

NOTE: Consult your Regional Supervisor concerning the advisability and cost-effectiveness of enforcing cases in which all or most of the amount owed is barred by a statute of limitations.

PROCEDURE:

Responsibility

ACTION

.Support Obligor
or Attorney

1. Raises issue of statute of limitations in administrative or judicial enforcement action.

.Investigator

2. Determines applicable statute of limitations (if any) from the following list:

<u>Type of Action</u>	<u>Statute of Limitations</u>	<u>Code(MCA) Section</u>
Administrative Notice of Support Liability	5 years prior to service	27-2-211(4)
Administrative Notice of Support Debt	6 years prior to service	40-5-255

section:
SPECIAL ENFORCEMENT
CONSIDERATIONS

subject:
Statutes of Limitation

<u>Type of Action</u>	<u>Statute of Limitations</u>	<u>Code(MCA) Section</u>
Writ of Execution on Judicial or Administrative Order (incl. Warrant for Distraint)	6 years after date of filing (unless extended by court order)	25-13-101
Judicial Action on Judgement (incl. tax offsets)	10 years after date of filing in District Court	27-2-201
Judicial Action to Establish Paternity (not presumed)	2 years after AFDC case first opens (mother and child have until child's 19th birthday)	40-6-108
Judicial Action by Presumed Father to Rebut Paternity	5 years after birth of child	40-6-108

NOTE: Consult your Regional Supervisor or Staff Attorney to verify which specific statutes of limitation apply in cases which are not clear.

3. Recalculates support arrearages so that periods prior to expiration of statute of limitations are not included.
4. Forwards case file with revised arrearage calculations to Regional Supervisor for review.
5. Reviews file to verify that the correct statute of limitations was applied and arrearage calculations are accurate. Makes appropriate notes in case file, and returns case to Investigator for enforcement.

.Regional
Supervisor

October 15, 1985

Page 2 of 2

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject:

Redirecting Support Payments

SUPERSEDES: CS 503.4, Redirecting Support Payments, July 1, 1997.

REFERENCE: MCA 40-5-205, 40-5-412.

POLICY: The purpose of a request to redirect support payments is to ensure that the CSED has a complete and accurate record of all support paid by an obligor, by requiring support to be paid to the CSED.

A request to redirect support payments to the CSED may be sent to an obligor residing in Montana, a Montana Clerk of Court, or both.

A request to a Montana Clerk of Court is appropriate when the support order was established by a Montana District Court or the obligor was ordered to pay support through the Montana Clerk of Court's office. The CSED must "release" (withdraw) the request when the case is closed.

A request to an obligor is appropriate when (1) the support order was established by a tribunal other than a Montana CSED administrative law judge, and (2) the obligor resides in Montana. If condition (2) applies at the time of case opening, the request will be contained in the case opening letter described in section CS 201.2. If the obligor does not live in Montana at the time of case opening, but subsequently moves to Montana (and condition (1) applies), the request is sent as a separate document at the later time.

PROCEDURES

Responsibility

ACTION

- .Caseworker
1. For all cases in which the CSED is enforcing a support obligation or payment of a support debt, determines whether a request to redirect payments is appropriate (see POLICY).
 - a. In cases where a request to an obligor to redirect payments is appropriate (and the

section: CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject: Redirecting Support
Payments

request was not contained in the case opening letter), completes form CS-503.4A, "Notification to Obligor" and mails to the obligor by regular mail, retaining a copy in the case record.

- b. In cases where a request to a Montana Clerk of Court is appropriate, completes CS-503.4B "Notice of Statutory Interest" and mails to the Clerk of Court, retaining a copy in the case record. Proceeds to step 3.

NOTE: In cases where the support order was established by a Montana district court and the obligor resides in Montana, actions in both 1a and 1b may apply.

2. Monitors for payment. If the entire support obligation is not received by the CSED within 8 working days after the end of the month in which support became due, proceeds to section 510.3.
3. Immediately upon closure of either (1) the non-public assistance case involving the obligee, or (2) the entire CSED case, completes and mails to the Clerk of Court form CS-219, Notice of Release of Statutory Interest.

Department of Social and
Rehabilitation Services**section:**
Civil Enforcement:
Administrative**subject:**
Administrative Civil Contempt**CHILD SUPPORT ENFORCEMENT****REFERENCE:** Section 40-5-226, MCA**POLICY:** Contempt is a willful disregard or disobedience of a public authority. The events constituting administrative civil contempt, as provided by section 40-5-226(13), MCA, are:

- (a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;
- (b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;
- (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;
- (d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or
- (e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time income is required to be withheld and paid to the department and the payor fails to take the required action.

PROCEDURES**Responsibility****ACTION**.Caseworker/
Investigator

1. Upon a determination that at least one of the contempt criteria listed above is met, prepare form CS-503.5A, "Application and Affidavit for Order to Show Cause."

NOTE: Call-outs 1-6 and 55-57 on the form should be completed in all cases. Please note that the caption should be modified as necessary to fit each individual case. The other call-outs (7-54) should be retained, revised, or deleted as appropriate to the case. These are general guidelines for documenting the different

section:Civil Enforcement:
Administrative**subject:**

Administrative Civil Contempt

types of contempt, and are grouped as follows:

- 7-17 Disobedience of order
- 18-30 Failure to appear at hearing or for genetic testing, after subpoena issued
- 31-40 Failure to produce evidence at hearing, after subpoena duces tecum issued
- 41-43 Failure to comply with discovery requests
- 44-54 Failure of payor to comply with order to withhold income

More than one act of contempt can be alleged on the same form. Include facts about each separate allegation of contempt. Also, if you have additional supporting evidence or information, include it. **Be sure to delete text containing call-outs that do not apply to your case.**

2. Number and attach all exhibits to the original application and affidavit, then make one complete copy set of this document.
3. Also prepare a proposed form CS-503.5B, "Contempt Citation and Order to Show Cause." Modify the caption as necessary to fit each individual case. Complete the name and address portion on the Certificate of Mailing (call-out 11 on the form). If you choose to serve the alleged contemnor by sheriff or civil process server instead of by mail, revise the language of the certificate of mailing to delete any reference to the alleged contemnor. Make one copy of the form.
4. Mail the original "Application and Affidavit for Order to Show Cause" together with the original, proposed "Contempt Citation and Order to Show Cause" to the OALJ; enter the associated SEARCHS case note. Place the copies of both documents in the case file. Calendar 20 days for response from the OALJ.

section:

Civil Enforcement:
Administrative

subject:

Administrative Civil Contempt

.Hearings
Assistant

5. Upon receipt of the documents, open a case file and enter the associated SEARCHS case note. Then forward the case file to the ALJ/HO for review and determination.

.ALJ/HO

6. Review the file. If it is determined that sufficient cause exists, grant the application and enter the associated SEARCHS case note; issue the proposed Contempt Citation and Order by signing the same and returning it to the Hearings Assistant for further processing. If sufficient cause does not exist, write "denied" across the face of the proposed Contempt Citation, and enter the associated SEARCHS case note; return the citation to the Hearings Assistant for further processing.

.Hearings
Assistant

7. If the order was issued: schedule the hearing (at least 45 days in the future) and enter the associated SEARCHS case note. Attach a copy of the instructions explaining a telephone hearing to the back of the order. Make a file copy and return the original issued "Contempt Citation and Order to Show Cause" to the caseworker/investigator.

If the order was denied: make a file copy and return original to the caseworker/investigator.

.Caseworker/
Investigator

8. Complete the certificate of mailing on the "Contempt Citation and Order to Show Cause." Date and sign your name. Make the appropriate number of copies and mail them as indicated in the Certificate of Mailing; enter the associated SEARCHS case note. Place the original in the case file. Make sure that a copy of the "Application and Affidavit for Order to Show Cause" is attached to all copies of the order before mailing.

NOTE: If the alleged contemnor is served by mail, it must be certified mail. If, however, you choose to serve the alleged contemnor through a civil process server or sheriff, then the alleged contemnor would not be included in the certificate of mailing. Instead you would prepare an appropriate Praecipe (see Form CS-401.3C) and forward the original Praecipe

section:
Civil Enforcement:
Administrative

subject:
Administrative Civil Contempt

together with the original and one copy of the Order to the sheriff/civil process server. Retain a copy of the Praecipe and Order in the case file.

9. Call the OALJ to advise of your telephone number for the hearing.

Calendar: (1) the hearing date and time; (2) the deadline for submitting exhibits and pre-hearing motions; and (3) return of the certified mail return receipt or other proof of service.

When the proof of service upon the alleged contemnor is received, enter the associated SEARCHS case note, forward a copy of the return to the OALJ, and retain the original in the case file.

.ALJ/HO

10. Conduct the hearing and enter the associated SEARCHS case note. Issue an order ruling on the alleged contempt. Deliver the order to the Hearings Assistant.

.Hearings
Assistant

11. Make sufficient copies of Order and mail to all parties; enter the associated SEARCHS case note. File original Order in the hearing file.

.Caseworker/
Investigator

12. File copy of Order upon receipt from the OALJ. Start appropriate enforcement action.

**SEE THE FOLLOWING PAGES FOR SAMPLE DOCUMENTS
AND INSTRUCTIONS**

section:

Civil Enforcement:
Administrative

subject:

Administrative Civil Contempt

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

IN RE THE SUPPORT OBLIGATION OF:

)

Case No. (1)

)

(2), Obligor

) Concerning: (3)

Custodian as of Notice Date

)

)

)

)

(4)

Child(ren)

APPLICATION AND AFFIDAVIT FOR ORDER TO SHOW CAUSE

STATE OF MONTANA)

: ss.

County of (5)

I, (6), being first duly sworn upon oath, say:

I am an employee of the Montana Department of Social and Rehabilitation Services, Child Support Enforcement Division (CSED).

I have examined the files and records in this matter and on such information as provided therein, believe the facts contained herein to be true and accurate.

On the (7) day of (7), 199 (7), a(n) (8)
order was issued by the Hearing Officer/Administrative Law Judge requiring the
alleged contemnor to (9). Said
order is attached hereto as Exhibit "(10)".

A copy of said order was sent by certified mail to the alleged contemnor.
The return receipt shows that (11) signed for the certified mail
on (12), 199 (12). A copy of the return receipt is attached
hereto as Exhibit "(13)".

Said Order was personally served upon the alleged contemnor on

CS-503.5A

section:Civil Enforcement:
Administrative**subject:**

Administrative Civil Contempt

____ (14) ____, 199 ____ (14) ____ by the Sheriff of ____ (15) ____ County, Montana.

A copy of the Return of Service is attached hereto as Exhibit " ____ (16) ____".

The alleged contemnor failed to comply with said Order in that ____

____ (17) ____.

A Subpoena was issued on ____ (18) ____, 199 ____ (18) ____ by the Hearing Officer/Administrative Law Judge directing the alleged contemnor to appear at a hearing to be held at ____ (19) ____ .m. on the ____ (20) ____ day of ____ (20) ____, 199 ____ (20) ____ at ____ (21) ____ and testify therein. A copy of said Subpoena is attached hereto as Exhibit " ____ (22) ____".

A Subpoena was issued on ____ (23) ____, 199 ____ (23) ____ by the Hearing Officer/Administrative Law Judge directing the alleged contemnor to appear at ____ (24) ____ .m. on the ____ (25) ____ day of ____ (25) ____, 199 ____ (25) ____ at ____ (26) ____ in order to submit to genetic paternity testing. A copy of said Subpoena is attached hereto as Exhibit " ____ (27) ____".

Said Subpoena was personally served upon the alleged contemnor on the ____ (28) ____ day of ____ (28) ____, 199 ____ (28) ____ by the Sheriff of ____ (29) ____ County, Montana. A copy of the Return of Service is attached hereto as Exhibit " ____ (30) ____".

A Subpoena Duces Tecum was issued on ____ (31) ____, 199 ____ (31) ____ by the Hearing Officer/Administrative Law Judge ordering the alleged contemnor to appear at ____ (32) ____ .m. on the ____ (33) ____ day of ____ (33) ____, 199 ____ (33) ____ at ____ (34) ____ and then and there to produce ____ (35) ____ . A copy of said Subpoena Duces Tecum is attached hereto as Exhibit " ____ (36) ____".

The Subpoena Duces Tecum was personally served upon the alleged

section:

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contemnor on the (37) day of (37), 199 (37) by the Sheriff of (38) County, Montana. A copy of said Return of Service is attached hereto as Exhibit "(39)".

The alleged contemnor did not appear as ordered and has not produced (40) as ordered by the Subpoena Duces Tecum.

Discovery requests were served on the alleged contemnor on the (41) day of (41), 199 (41). A copy of the discovery requests are attached hereto as Exhibit "(42)" and a copy of the proof of service is attached hereto as Exhibit "(43)".

The alleged contemnor has failed to respond to said discovery requests within the time allowed by law.

On the (44) day of (44), 199 (44), an Order to Withhold Income was entered by the above agency and was directed to (45). A copy of the Order to Withhold is attached hereto as Exhibit "(46)".

The Order to Withhold was sent via certified mail to the employer and was signed for by (47) on the (48) day of (48), 199 (48). A copy of said certified mail return receipt is attached hereto as Exhibit "(49)".

The Order to Withhold was personally served upon the employer by the Sheriff of (50) County, Montana on the (51) day of (51), 199 (51). A copy of said Return of Service is attached hereto as Exhibit "(52)".

The order directed said employer to withhold \$ (53) from the paycheck of (54). The order also directed the employer that

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said withholding must be delivered within ten (10) days to the CSED Wage Withholding Unit in Helena, Montana. Further, the order directed the employer that wage withholding must continue until the CSED notifies the employer that the withholding order is terminated or modified or until said employee is no longer employed with employer.

Said employer has not complied with the Order to Withhold Income and has not contacted the CSED with any information upon which to dismiss the order.

Each failure of the employer to comply with the terms of the Income Withholding Order constitutes a separate contempt.

As set forth above, the alleged contemnor failed to abide by an order of the CSED and, therefore, is in contempt.

No previous application has been made for the relief sought herein.

WHEREFORE, Affiant requests that the OALJ issue a Contempt Citation and Order to Show Cause requiring the alleged contemnor to appear and show cause why (55) should not be found in contempt of an order of the CSED.

DATED this (56) of (56), 199 (56).

(56)
(56) {Name and Title}

SUBSCRIBED AND SWORN before me this (57) day of (57), 199 (57).

(SEAL)

(57)
Notary Public for the State of Montana
Residing at: (57)
My commission expires: (57)

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Administrative**subject:**

Administrative Civil Contempt

Responsibility	Call-Out Number ACTION
----------------	--------------------------------

FORM CS-503.5A, "APPLICATION AND AFFIDAVIT FOR ORDER TO SHOW CAUSE"--Used to request a finding of contempt.

.Caseworker/
Investigator

- 1 Enter the CSED case number.
- 2 Enter the name of the obligor.
- 3 Enter the name of the custodial party.
- 4 Enter the name(s) of the child(ren).
- 5 Enter the name of the county in which the application and affidavit is being signed.
- 6 Enter your name.
- 7 Enter the date the order not being complied with was entered.
- 8 Enter the exact name of the CSED order which you allege was not complied with.
- 9 Specifically describe what the CSED order required the alleged contemnor to do.
- 10 (Number the CSED order as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of the CSED order.
- 11 Enter the name of the person who signed the certified mail return receipt.
- 12 Enter the date the certified mail return receipt was signed by the person named in #11 above.
- 13 (Number the certified mail return receipt as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of the certified mail return receipt.
- 14 Enter the date the sheriff or civil process server served the CSED order.
- 15 Enter the county, if served by a sheriff. (If it was served by a civil process server, modify

section:Civil Enforcement:
Administrative**subject:**

Administrative Civil Contempt

the language accordingly.)

- 16 (Number the return of service as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of said return of service.
- 17 Specifically describe what acts/nonacts of the alleged contemnor you allege are in contempt of the CSED order.
- 18 Enter the date the subpoena was issued.
- 19 Enter the time the of the hearing, including the appropriate a.m. or p.m. designation.
- 20 Enter the date of the hearing.
- 21 Enter the place of the hearing.
- 22 (Number the subpoena as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of the subpoena.
- 23 Enter the date the subpoena was issued.
- 24 Enter the time of the hearing, including the appropriate a.m. or p.m. designation.
- 25 Enter the date of the hearing.
- 26 Enter the place of the hearing.
- 27 (Number the subpoena as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of the subpoena.
- 28 Enter the date the sheriff or civil process server served the subpoena.
- 29 Enter the county, if served by a sheriff. (If it was served by a civil process server, modify the language accordingly.)
- 30 (Number the return of service as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of said return of service.
- 31 Enter the date the subpoena duces tecum was

section:Civil Enforcement:
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issued.

- 32 Enter the time of the hearing, including the appropriate a.m. or p.m. designation.
- 33 Enter the date of the hearing.
- 34 Enter the place of the hearing.
- 35 Specifically describe what the subpoena duces tecum ordered to be produced at the hearing.
- 36 (Number the subpoena as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of the subpoena duces tecum.
- 37 Enter the date the sheriff or civil process server served the subpoena duces tecum.
- 38 Enter the county, if served by a sheriff. (If it was served by a civil process server, modify the language accordingly.)
- 39 (Number the return of service as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of said return of service.
- 40 Specifically describe the acts/nonacts of the alleged contemnor which you allege are in contempt of the subpoena duces tecum.
- 41 Enter the date the discovery requests were served.
- 42 (Number the discovery requests as an exhibit and attach them to your application and affidavit.) Enter the Exhibit No. of said discovery requests.
- 43 (Number the proof of service as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of said proof of service.
- 44 Enter the date the order to withhold was entered.
- 45 Enter the name and address of the person/business to whom the order was directed.

section:Civil Enforcement:
Administrative**subject:**

Administrative Civil Contempt

- 46 (Number the order to withhold as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of said order.
- 47 Enter the name of the person who signed the certified mail return receipt.
- 48 Enter the date the certified mail return receipt was signed by the person named in #47 above.
- 49 (Number the certified mail return receipt as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of said return receipt.
- 50 Enter the county, if served by a sheriff. (If it was served by a civil process server, modify the language accordingly.)
- 51 Enter the date the sheriff or civil process server served the order to withhold.
- 52 (Number the return of service as an exhibit and attach it to your application and affidavit.) Enter the Exhibit No. of said return of service.
- 53 Enter the amount of wages ordered to be withheld.
- 54 Enter the name of the employee (obligor) whose wages were ordered to be withheld.
- 55 Enter the appropriate pronoun -- he, she, it.
- 56 Enter the date, sign your name and type your name and title under the signature line.
- 57 Notarize the CSED employee's signature and affix your seal.

.Notary

section:

Civil Enforcement:
Administrative

subject:

Administrative Civil Contempt

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

IN RE THE SUPPORT OBLIGATION OF:

)

Case No. (1)

)

(2), Obligor

)

Concerning: (3)
Custodian as of Notice Date

)

)

)

)

(4)
Child(ren)

)

CONTEMPT CITATION AND ORDER TO SHOW CAUSE

TO: (5)ALLEGED CONTEMNOR

On the (6) day of (6), 199 (6), the Office of the Administrative Law Judge (OALJ) received the attached APPLICATION AND AFFIDAVIT FOR ORDER TO SHOW CAUSE in this matter from the Child Support Enforcement Division (CSED). As provided in Mont. Code Ann. § 40-5-226(14), the undersigned Administrative Law Judge/Hearing Officer reviewed the application and affidavit. Upon the facts therein, it appears that there is reason to believe that a contempt has been committed. Now, therefore, IT IS HEREBY ORDERED:

1. The Alleged Contemnor named above shall appear at a telephone hearing to be conducted on (7), the (7) day of (7), 199 (7) at the hour of (8) M. mountain standard time and show cause, if any there be, why the Alleged Contemnor should not be found in contempt of an order of the CSED.

2. The parties shall submit all exhibits to be considered at the hearing to the OALJ no later than ten (10) days prior to the scheduled hearing so that they may be exchanged prior to the hearing.

3. Pre-hearing motions may be submitted to the OALJ no later than ten (10) days prior to the scheduled hearing. Copies of all pre-hearing motions shall be mailed to the other parties by the moving party at the time of submission to the OALJ. Pre-hearing motions will be considered prior to the taking of any evidence at the date and time set for hearing in this matter.

CS-503.5B

section:Civil Enforcement:
Administrative**subject:**

Administrative Civil Contempt

4. The parties shall advise the OALJ of the telephone number at which they can be reached for the hearing.

DATED this (9) day of (9), 199 (9).

(9)

Administrative Law Judge/Hearing Officer
Child Support Enforcement Division
Office of the Administrative Law Judge
111 North Jackson
Helena, MT 59620

READ THE ATTACHED INSTRUCTIONS WHICH EXPLAIN A TELEPHONE HEARING. The Hearing Officer will place a call to the number you provide at the time of the hearing.

If you ignore this Contempt Citation and Order to Show Cause for any reason, the CSED will issue an order finding you in contempt and imposing a penalty of \$500.00 for each count of contempt alleged. Penalties may be enforced by seizure and sale of your assets, or by any other legal means.

LEGAL BASIS OF THIS NOTICE: The CSED has the power to impose penalties for civil contempt under Mont. Code Ann. § 40-5-226.

CERTIFICATE OF SERVICE BY MAIL

This is to certify that I, a duly authorized representative of CSED, did serve the alleged contemnor by certified U.S. mail and the other parties by regular U.S. mail, postage prepaid, on the (10) day of (10), 199 (10), the foregoing CONTEMPT CITATION AND ORDER TO SHOW CAUSE as follows:

(11)

(12)

section:Civil Enforcement:
Administrative**subject:**

Administrative Civil Contempt

Responsibility	Call-Out Number	ACTION
<u>FORM CS-503.5B, "CONTEMPT CITATION AND ORDER TO SHOW CAUSE"</u>		
.Caseworker/ Investigator	1	Enter the CSED case number.
	2	Enter the name of the obligor.
	3	Enter the name of the custodial party.
	4	Enter the name(s) of the child(ren).
	5	Enter the name and address of the alleged contemnor.
.OALJ	6	Enter the date the OALJ received the application and affidavit.
	7	Enter the day and date scheduled for a hearing on the alleged contempt.
	8	Enter the time of the hearing, including the appropriate a.m. or p.m. designation.
.ALJ/HO	9	Enter the date and sign your name.
.Caseworker/ Investigator	10	Enter the date the copies of the Contempt Citation will be mailed to the parties.
	11	List the names and addresses of the parties to whom you are mailing a copy of the Contempt Citation.
	12	Sign your name.

Department of Public Health and
Human Services

section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

CHILD SUPPORT ENFORCEMENT**subject:**

Order to Seek Employment

SUPERSEDES: [new section]

REFERENCES: 42 USC §666(a)(15); MCA §40-5-275.

POLICY: Seek-Work as a CSED Enforcement Tool. Montana law allows the CSED to enforce a support order by requiring the obligor to seek employment and report on the progress of that activity. If the obligor does not comply, the CSED can enforce the seek-work order through a contempt action. It is the policy of the CSED to limit the use of this enforcement tool to cases where the obligor has an incentive to comply, and where other enforcement methods have been or are likely to be unsatisfactory. Caseworkers should carefully weigh the administrative costs against the likely outcomes before initiating action under this section.

Conditions for Initiating Seek-Work Action. The following conditions are required for initiating action in this section:

- (1) The obligor owes a support debt.
- (2) The obligor is underemployed, and is not engaged in diligent efforts to seek suitable employment.

NOTE: "Underemployed" and "Suitable Employment" Defined. For purposes of this section "underemployed" means not engaged in suitable employment; "suitable employment" means employment commensurate with the obligor's qualifications and the availability of employment opportunities in the community, or in the absence of commensurate employment available within a reasonable distance from the obligor's address, "suitable employment" means any employment that the obligor is capable of performing.

- (3) An enforcement action is pending (for example, income withholding, medical enforcement, license suspension, contempt action) and a hearing on the notice has been requested.
- (4) The obligor has the capacity to seek employment and to engage in work if employment

section: CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject: Order to Seek
Employment

is offered. For purposes of this section an obligor is incapacitated--and not subject to a CSED seek-work action--when he or she is receiving benefits reflecting **total** physical or mental disability (for example, certain workers' compensation, railroad, veterans' or social security benefits), or can show other proof of **total** disability. Incapacity may be due to illness, injury, or some other condition, and may be permanent or temporary.

- (5) There is a reasonable expectation of compliance with the seek-work order, and the CSED has a practical means of monitoring that compliance; also, the CSED expects to pursue further action in case of noncompliance.
- (6) There is sufficient evidence to prove the points in conditions (2) and (4) above. Evidence supporting these points may include
 - proof of previous employment with descriptions of duties,
 - testimony of witnesses having direct knowledge of the obligor's current, or relevant past, capacity or ability,
 - proof of educational or training qualifications,
 - public records of jobs available in the obligor's community or within a reasonable distance of the obligor's address (lists obtained from a local Job Service office, for example)
 - any other information showing the obligor is now able to seek and engage in employment (for example, medical records relating to ability to work; membership records showing participation in relevant activities).

PROCEDURES:

RESPONSIBILITY

ACTION

- | | |
|------------|--|
| Caseworker | 1. In a case in which an enforcement hearing is requested and granted, determines whether an order to seek employment may be appropriate (see POLICY). If so, proceeds to step 2. If not, takes no further action under this |
|------------|--|

**section: CIVIL ENFORCEMENT:
ADMINISTRATIVE**

**subject: Order to Seek
Employment**

section.

2. Prior to the enforcement hearing, prepares an oral motion for an order to seek employment; proposes in the motion that the obligor be directed to take the following actions:

- (1) Seek suitable employment within a specified amount of time (to be determined by the Administrative Law Judge at the hearing), where "suitable employment" means employment commensurate with the obligor's qualifications and the availability of employment opportunities in the community, or in the absence of commensurate employment available within a reasonable distance from the obligor's address, "suitable employment" means any employment that the obligor is capable of performing.
- (2) File a weekly report with the CSED showing at least five new attempts by the obligor to find employment.
- (3) Include in the weekly report the name, address, and telephone number of each employer with whom the obligor sought employment, and the name of each individual the obligor contacted to inquire about or apply for employment.
- (4) Within 3 working days after obtaining employment, notify the CSED of the name, address, and telephone number of the employer, and of the name of an individual the CSED may contact to verify employment.
- (5) In cases where income withholding or a similar plan for payment of the support debt has **not been ordered**, or a payment plan has been ordered but the payments are **not sufficient** to reduce the debt: Make payments on the past-due amount at the rate of 1/24th of the debt amount per month, in addition to any payment due for current support; the amount for debt payment may be less than 1/24th if it is

section: CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject: Order to Seek
Employment

determined according to the guidelines for hardship adjustments to income withholding (section CS 510.5) or for license suspension payment plans (section CS 530.2).

Also includes in the oral motion

- a statement that the obligor has claimed inability to pay support because of unemployment or underemployment,
- for any option identified in step 3, a statement proposing a specific alternative to the seek-work requirement, reverting to the seek-work requirement if the obligor fails to comply with the alternative, and
- a statement proposing that the seek-work provisions of the order be effective for 6 months or until the obligor finds work, whichever occurs first, and proposing an effective period for any alternative requirement.

3. In preparation for the enforcement hearing, takes additional steps as follows:

- a. Determines whether, in connection with the enforcement notice now pending, the obligor has claimed inability to pay support because of unemployment or underemployment. Evidence of this claim may be
 - an overt statement by the obligor,
 - an indirect statement by the obligor clearly implying the claim, or
 - failure of the obligor to object to the claim when suggested by another person.
- b. Determines whether other steps by the obligor, if ordered by the CSED, would be acceptable in lieu of an order to seek employment. For example, it may be desirable for the obligor to pursue training or education to improve his or her job qualifications, or to receive general training in finding and securing a job.

section: CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject: Order to Seek
Employment

If an acceptable alternative to seek-work action is identified in the case, determines whether

- there is a reasonable probability the obligor would comply with the alternative if ordered, and
- the required activity could be monitored by the CSED with little difficulty.

If so, defines any necessary details and includes the alternative in the motion prepared in step 2. If not, takes no further action with respect to the alternative.

- c. Determines whether discovery on the seek-work issue will be necessary; if so, prepares an oral motion for discovery of the information needed to prove the points in step 7.

4. Attends the enforcement hearing.

- a. If no claim of inability to pay based on employment status exists at the time of the hearing, and the obligor makes no claim at the hearing, asks a direct question to determine whether the obligor is or is not making this claim. If the obligor makes the claim, proceeds to step 4b. If not, proceeds with the enforcement hearing but takes no further action with respect to an order to seek employment.
- b. If before or during the hearing the obligor claims inability to pay based on employment status, as described in step 3a, orally presents the motion prepared in step 2, and any motion for discovery prepared in step 3c.

OALJ

- 5. Conducts the enforcement hearing according to the procedures for the specific enforcement remedy. Upon a motion by the caseworker for an order imposing a payment plan and requiring seek-work or alternative activity, takes action in step 5a, 5b, or 5c, and 5d, as appropriate.

- a. If the obligor is agreeable to the

**section: CIVIL ENFORCEMENT:
ADMINISTRATIVE**

**subject: Order to Seek
Employment**

payment plan and the seek-work or alternative requirements, and waives the right to a hearing on these issues, enters an oral order as proposed in the motion or as agreed during the enforcement hearing.

- b. If the obligor objects to the payment plan or to the seek-work or alternative requirements, enters an oral "show cause" order setting a date and time for a seek-work hearing on the issues in the motion (taking into account the time needed for discovery, if applicable), directing the obligor to appear and show cause why the payment plan and seek-work or alternative requirements should not be imposed, and ordering discovery if applicable.
- c. If the information presented at the enforcement hearing clearly disproves the basis for the motion, orally denies the motion.
- d. Follows the oral order entered in 5a, 5b, or 5c above with a written notice and order for a seek-work hearing; includes exhibit due dates; sends the notice and order to the seek-work hearing participants.

Caseworker

- 6. If a discovery order is not honored, consults with the CSED staff attorney about appropriate methods of enforcement.
- 7. Prepares for and attends the show-cause hearing on the seek-work issue. Points to be proved at the hearing include
 - (1) The obligor is not currently engaged in diligent, bona fide efforts to seek suitable employment.
 - (2) The obligor has the capacity and ability to seek employment and to engage in work if employment is offered.
 - (3) Suitable employment is available within a reasonable distance from the obligor's address.
 - (4) If applicable, the obligor is not currently participating in a payment plan

section: CIVIL ENFORCEMENT:
ADMINISTRATIVE

subject: Order to Seek
Employment

sufficient to reduce the support debt.

- (5) If applicable, the obligor is capable of participating in training or education to improve his or her earning capacity.

(See POLICY for types of evidence that may be used to prove the above points.)

OALJ

8. Conducts the show-cause hearing on the payment plan and seek-work issues; enters a decision and order, and informs the participants.

Caseworker

9. Upon entry of an order imposing a payment plan and seek-work or alternative requirements, sets ticklers to periodically monitor for compliance by the obligor during the effective period of the order.

- a. If the obligor fails to comply with the seek-work requirements, consults with the CSED staff attorney and takes action under

- judicial civil contempt (MCA Title 40 Chapter 5 Part 6),
- administrative civil contempt (MCA section 40-5-226(12)), or
- criminal nonsupport (MCA section 45-5-621).

- b. If the obligor fails to comply with the payment plan, consults with the CSED staff attorney and takes action under MCA section 40-5-226(12) for administrative civil contempt.

- c. If the obligor fails to comply with any alternative requirements, consults with the CSED staff attorney to activate and implement the seek-work order; takes action in step 9a to enforce the seek-work order if necessary.

10. If the obligor complies with the order issued in step 8 but does not obtain employment within 6 months after entry of the order, monitors the case for the next enforcement proceeding, and determines at that time whether new seek-work action is appropriate.

Department of Revenue

section: ADMINISTRATIVE
ENFORCEMENT OF
SUPPORT OBLIGATIONS

CHILD SUPPORT ENFORCEMENT

subject: CS-507, "Notice
of Support Lien"

POLICY:

At any time a "Warrant for Distrainment" is in effect against an obligor for a support obligation, the obligor fails to make payment thereon, and the obligor is employed or owed a debt by a third person, a "Notice of Support Lien" may be issued to such employer or third person. The effect of a "Notice of Support Lien" is to prevent transfer of income or assets of the support obligor so that all or part of the income or assets may be seized or sold pursuant to a "Writ of Execution".

USE--The following list includes some of the types of income or assets which can be "frozen" by use of a "Notice of Support Lien":

- . Wages, salary, commissions, or other income from employment (see Manual Section CS-503.9 on garnishment limitations).
- . Amounts owed an obligor acting as an independent contractor (up to 100%).
- . Unemployment Insurance Benefits - (see Manual Section CS-503.9 on garnishment limitations).
- . Rent, installment, or other periodic payments owed to an obligor (up to 100%).
- . Liquidated debts owed to an obligor (up to 100%).
- . Liquid assets of an obligor in the hands of a third person (up to 100%). Examples include:
 - Stocks, bonds, or personal property not subject to liens or security interests.
- . Proceeds from trust funds (up to 100%).

section:
ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:
CS-507, "Notice of
Support Lien"

. Judgements owed to an obligor (up to 100%).

A Regional Supervisor or CSE Attorney can verify whether income or assets not listed above are subject to a "Notice of Support Lien".

PROCEDURE:

Responsibility

ACTION

PREPARATION AND ISSUANCE OF A "NOTICE OF SUPPORT LIEN"

- | | |
|----------------------|---|
| .Investigator | 1. Composes form CS-507, "Notice of Support Lien" according to instructions and sample "Notice" that follow. |
| | 2. In cases of assets other than wages or Unemployment Insurance benefits, composes a special cover letter for the "Notice". |
| .Typist | 3. Prepares an original and one copy of form CS-507 according to the instructions of the Investigator. |
| | 4. Prepares an original and one copy of form CS-508, "Notice of Support Lien Cover Letter" when the asset is wages. When the "Notice" is to be issued to the Montana Department of Labor and Industry for the interception of Unemployment Insurance Benefits, no letter is necessary. When the asset is other than the two mentioned above, a special letter is drafted by the Investigator. |
| | 5. Prepares a photocopy of the most recent "Warrant for Distrainment". |
| | 6. Addresses and prepares an envelope and a return receipt for certified mail. |
| .Regional Supervisor | 7. Reviews the CS-507, CS-508 (or special Cover |

section:
ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:
CS-507, "Notice of
Support Lien"

letter), and the "Warrant for Distrainment" and, if correct, makes a notation in the case record approving the action.

- .Investigator
 - 8. Signs the CS-507 and copy and the CS-508 (or special cover letter).
 - 9. Signs and dates the original "Notice of Support Lien" Affidavit of Service and its copy.
 - 10. Diaries the case for 30 calendar days or longer depending on the nature of the asset, if known, to determine when a "Writ of Execution" is necessary (see DURATION, below).
- .Notary Public
 - 11. Notarizes the original "Notice of Support Lien" Affidavit and its copy.
- .Typist
 - 12. Encloses materials in the certified mail envelope in the following order:
 - . CS-508, "Notice of Support Lien Cover Letter" (or special cover letter (original))
 - . CS-507, "Notice of Support Lien" (original) *Photocopy*
 - . "Warrant for Distrainment" (photocopy)

Deposits the sealed envelope with return receipt attached in the United States Mail, postage prepaid.

NOTE: For purposes of proof of service if later needed, it is critical that the original Affidavit of Service is retained in the case record. Since this is physically a part of the "Notice of Support Lien", signatures are required on both the original and its copy.

- 13. Places the following materials in the case file:
 - . CS-507, "Notice of Support Lien" (security copy)

section:
ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:
CS-507, "Notice of
Support Lien"

- . CS-508, "Notice of Support Lien Cover Letter" (or special cover letter) (security copy)
- . Receipt for Certified Mail

NOTE: For satellite offices, the Investigator should draft all necessary documents, have them typed by the typist, reviews both the "Notice of Support Lien" and its cover letter, and signs the letter. The "Notice of Support Lien and letter are then forwarded to the Regional Supervisor with any appropriate justification for approval and signature. The Regional Supervisor reviews the documents and, if correct, signs the "Notice of Support Lien" and the certificate of mailing and copies and gives the material to the Notary Public for notarization. The Regional Office is responsible for mailing the original "Notice of Support Lien" and cover letter, and returning the copy of each to the Satellite Office for inclusion in the case record.

DURATION:

1. The "Notice of Support Lien" becomes effective on the date it is received by the third person.
2. The "Notice of Support Lien" remains effective until a written release is received by the third person.
3. CS-54 "Writ of Execution" should be issued periodically (see Manual Section CS-503.8) to "pick up" amounts accumulated under the "Notice of Support Lien".
4. The total amounts withheld by third persons pursuant to a "Notice of Support Lien" should be monitored closely so that such amounts do not exceed the currently effective "Warrant for Distrainment".

section:
ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:
CS-507, "Notice of
Support Lien"

CIVIL LIABILITY OF THE THIRD PERSON:

Section 40-5-242, MCA (see Manual Section CS-9904.2) outlines the third person's liability for failure or refusal to honor a "Notice of Support Lien". In the event this occurs, the Investigator should contact the third person in an effort to elicit cooperation. Continued non-cooperation should be reported to a Regional Supervisor or CSE Attorney to review for possible action to enforce civil liability.

SEE FOLLOWING PAGES FOR INSTRUCTIONS AND SAMPLES

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section:
ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:
CS-507, "Notice of
Support Lien"

INSTRUCTIONS:

Responsibility Call Out Number ACTION

FORM CS-507, "NOTICE OF SUPPORT LIEN"--Used to prevent the transfer of distrained income or assets.

- .Investigator
- (1) Enter the name of the obligor.
 - (2) Enter the obligor's Social Security Number.
 - (3) Enter the obligor's address.
 - (4) Enter the ~~Administrative notice~~ *District Court Cause* number.
 - (5) Enter the name of the asset holder.
 - (6) Enter the address of the asset holder.
 - (7) Enter the name of the obligor.
 - (8) Enter the number of the "Warrant for Distrainment".
 - (9) Enter the description of the distrained property:

- . For wages, salary, commissions, or other income from employment, use the language:

" % of the net proceeds of each and every paycheck", adding "up to a maximum of \$ _____"

to indicate the maximum permissible amount subject to withholding if the distrained amount is so low that it is likely to be quickly exceeded by the third person.

- . For Unemployment Insurance Benefits, use the language:

"50% of Unemployment Compensation due Defendant as authorized in 39-51-3106, MCA, 27-18-407, MCA, 15 USCA, 1671, et seq.".

section:
ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:
CS-507, "Notice of
Support Lien"

. For other types of assets or income, use
the language:

"_____ % of the amount due the defendant
from [insert a description of the asset/-
income]".

- (10) Enter the name of the obligor.
- (11) Enter the filing date of the "Warrant for
Distrain".
- . (Regional Supervisor in Sat. Off.) (12) Enter the current date.
- (13) Sign your name.
- . Typist (14) Type the name of the Investigator (Regional
Supervisor, in Satellite Offices).
- (15) Type the office address.
- (16) Type the name of the Investigator (Regional
Supervisor).
- . Investigator (Regional Supervisor) (17) Enter the mailing date (should be current
date).
- . Typist (18) Enter the name and address of the asset holder.
- . Investigator (Regional Supervisor) (19) Enter the mailing date.
- (20) Sign your name.
- . Typist (21) Type the name of the Investigator (Regional
Supervisor).
- . Notary Public (22) Enter the current date.
- (23) Sign your name.
- (24) Enter your city of residence.
- (25) Enter your Notary expiration date.

section:

ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:

CS-507, "Notice of
Support Lien"

DEPARTMENT OF REVENUE LEGAL & ENFORCEMENT DIVISION CHILD SUPPORT ENFORCEMENT PROGRAM	
	STATE OF MONTANA
① _____ ② _____ ATTN: Payroll Manager RE: Notice of Support Lien for _____ ③ _____ Social Security Account Number: _____ ④ _____ Dear Sir/Madam: Enclosed are two forms you must, by law, honor. The Warrant for Distraint is a judgement, and a support lien is created when it is filed with the District Court. It gives the Department of Revenue the ability to prevent the transfer of property (wages) in accordance with (MCA 40-5-242) by delivering to you the enclosed Notice of Support Lien. The Notice of Support Lien requires you, as an employer, to withhold up to 50% of the net earnings from each and every paycheck for the above referenced individual, not to exceed a total of \$ _____ ⑤ _____. Please proceed as follows: 1. Deduct and hold _____ ⑥ _____ % of the net earnings due the above referenced individual until notified by this agency, in writing, that the deductions can be stopped. 2. Deduct no more than the amount specified above. When the total you have deducted equals this amount, please notify the Department of Revenue at the above address or phone number so an updated Warrant can be forwarded for continued deductions. the Notice can be released as paid in full, or other payment arrangements can be made. 3. Hold all funds collected until the Sheriff serves you with a Writ of Execution giving him authority to claim any funds withheld. <u>DO NOT</u> send these funds directly to the Department of Revenue. Make checks payable to the Sheriff. 	

section:

ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:

CS-507, "Notice of
Support Lien"

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Page Two

PLEASE BE ADVISED, FAILURE TO COMPLY WITH THESE INSTRUCTIONS
COULD RESULT IN YOUR BEING 100% LIABLE FOR THE VALUE OF THE
SUPPORT DEBT LISTED ON THE WARRANT FOR DISTRAINT IN ACCORDANCE
WITH 40-5-242.

You will be contacted in approximately four weeks for a status
update on the lien process. If the above referenced individual
terminates his employment after issuance of this Notice of
Support Lien please notify the Department of Revenue immedi-
ately. Please note, (in accordance with MCA 40-5-256), no
employer may discharge or prejudice an employee for reason that
an assignment of earnings has been presented in settlement of a
support debt or that a Warrant for Distraint has been served
against the employee's earnings.

Thank you for your cooperation in this matter. If you have any
questions concerning it, please contact me at the above address
or phone number.

Sincerely,

9
Investigator

10
Enclosures

July 15, 1985

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section:
ADMINISTRATIVE ENFORCEMENT
OF SUPPORT OBLIGATIONS

subject:
CS-507, "Notice of
Support Lien"

INSTRUCTIONS:

Responsibility	Call Out Number	ACTION
----------------	-----------------	--------

FORM CS-508, "NOTICE OF SUPPORT LIEN COVER LETTER"--
Used when the distrained asset is salary or wages.

.Typist

- ① Enter the current date.
- ② Enter the employer's name and address.
- ③ Enter the obligor's name.
- ④ Enter the obligor's SSAN.
- ⑤ Enter the amount of the "Warrant for Distrainment" unless a smaller limit has been specified by the Investigator; in which case enter the smaller limit.
- ⑥ Enter the percent to be withheld.
- ⑦ Enter the employer's name.
- ⑧ Enter the current date.
- ⑨ Enter the Investigator's name.
- ⑩ Enter the typing initials.

Supercedes: CS 503.7 (2/29/80)

CS 503.7

Department of Revenue

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

Warrant for Distrain

CHILD SUPPORT ENFORCEMENT

ISSUANCE:

31 DAYS AFTER NOTICE OR ORDER--The Department may file a Warrant for Distrain as a judgement against the obligor parent 31 days after the obligor parent has received a Notice and failed to respond, or 31 days after an Administrative Order determining liability has been issued and no appeal from it filed. Section 40-5-241, MCA.

Exception--If the obligor parent is in the process of disposing of attachable assets, which assets could be used to satisfy a debt due the State of Montana, the immediate filing of a Warrant is permitted. (See FMD CS 403.4)

DEFINITIONS:

NOTICE OR ORDER-- any properly executed:

- . Notice of Support Debt
- . Notice of Support Liability
- . Notice of Support Debt and Support Liability
- . Notice & Finding of Financial Responsibility
- . Default Order (of the Hearings Officer)
- . Final Order (of the Hearings Officer)

OBLIGOR HAS RECEIVED--Includes the case of obligor refusal of service. Failure of service, in itself, does not constitute refusal; to refuse is to decline to accept.

SECTION:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

SUBJECT:

Warrant for Distrainment

DELAYS TO
ISSUANCE:

REQUEST FOR ADMINISTRATIVE HEARING--Postpone Warrant issuance until there is a resolution of the Hearing process through:

1. Voluntary written withdrawal of Request (may occur at a pre-hearing settlement conference), or
2. Issuance of an Order by the Hearings Officer.

JUDICIAL REVIEW--If a petition for judicial review is filed in a District Court by the obligor, do not issue a Warrant, or execute on a docketed Warrant, until such proceedings are completed.

PROCEDURE:

Responsibility

ACTION

PREPARATION, ISSUANCE, AND FILING OF A WARRANT FOR
DISTRRAINT.Enforcement
Specialist

1. Inform the CSE Regional Supervisor of the obligor's failure to make payments in compliance with the Notice or Order.

.Regional
Supervisor

2. Approve the preparation of the Warrant in the case file (or by phone for satellite offices).

Note: The Enforcement Specialist records the date and time of the phone approval in the case file.

.Enforcement
Specialist

- 3A. Compose Form CS-53, "Warrant for Distrainment". Complete the items indicated on the sample Warrant that follows.
- 3B. Compose Form CS-51, "Praecipe" (to the District Court Clerk). Complete the items indicated on the sample Praecipe that follows.

.Typist

4. Prepare one copy of Form CS-53 and Form CS-51 according to the instructions of the Enforcement Specialist.

SECTION:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

SUBJECT:

Warrant for Distraint

.Enforcement
Specialist

5. Review the typed documents for accuracy and completeness.

6. Send the partially completed Forms CS-53 and CS-51 to the CSE Bureau Chief.

.CSE Chief

7. Enter the Warrant on the sequential listing of Warrants issued, assigning the first unused number.

8. Sign the Praeipce (to the Clerk of Court).

9. Sign Form CS-53, "Warrant for Distraint".

10. Assemble the correct number of copies.

11. Mail documents to the appropriate District Court.

.Clerk of
Court

12. Docket the Warrant for Distraint, retaining the Original.

13. Forward the certified copy to the Child Support Enforcement Officer designated in the Praeipce.

.Enforcement
Specialist

14. Place the certified copy in the case file for use in preparation of a Writ of Execution.

15. Send a photocopy of the Docketed Warrant to the CSE Bureau Chief.

.CSE Chief

16. Maintain a central file of all docketed Warrants for Distraint, alphabetically by support debtor.

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

Warrant for Distrain

INSTRUCTIONS:

Responsibility Call Out No. ACTION

FORM CS-53, "WARRANT FOR DISTRAINT"-- Upon completion, send this form to the CSE Bureau Chief.

.Enforcement
Specialist

- ① County of lien filing. (UPPER CASE)
- ② City of lien filing. (UPPER CASE)
- ③ Legal name and address of the support debtor.
- ④ City of the CSE originating office.
- ⑤ Number assigned to case by CSEB. Note: Room has been left for entry of Divorce Decree Numbers if a District Court Clerk requests.
- ⑥ Period (or periods) covered by this lien.
- ⑦ Total amount of child support due for period.
- ⑧ Total amount paid as child support for period.
- ⑨ Net amount of child support remaining unpaid for the period at the time of lien preparation.
- ⑩ Leave Blank.
- ⑪ Leave Blank.
- ⑫ Same as Item 9.
- ⑬ Total Dollars & Cents listed in Item 12.
- ⑭ Enter the Number of the Notice or Order.
- ⑮ Indicate manner of giving Notice; e.g. registered mail; sheriff's service; in person by the CSEB (obtain obligor's signature on "Acknowledgement of Notice and Waiver of Right to Service.")
- ⑯ Enter the date, month, and year of the obligor's receipt (or refusal) of Notice or Order.
- ⑰ Enter the county of warrant filing.

CS 503.7

SECTION:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

SUBJECT:

Warrant for Distrainment

STATE OF MONTANA

CS-53
(10/1/81)

TO THE CLERK OF THE DISTRICT COURT

OF 1 COUNTY2, MONTANA

WARRANT FOR DISTRAINT

No. CSE _____

Name of Person Owning the Support Debt:

Address:

Child Support Office

CSE Case Number

KNOW ALL MEN BY THESE PRESENTS:

THAT THE PERSON OWING THE SUPPORT DEBT named above, and hereinafter referred to as the Support Debtor, is liable to the Department of Revenue for Child Support and Interest for the periods and in the amounts hereinbelow set forth, to wit:

Period	Amount Owed	Amount Paid	Balance Due	Interest Rate	Interest Due	Support and Interest Due
<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>

M.C.A. 40-5-241

AMOUNT OF WARRANT \$

13

WHEREAS, the Department of Revenue provided notice of this support liability to the Support Debtor, said Notice 14 having been given by 15 on or about the 16 day of 16, 19 16; and

WHEREAS, the Department of Revenue has caused this Warrant for Distrainment to be issued and filed with the Clerk of the District Court for 17 County;

NOW, I DO COMMAND YOU, the said Sheriff or agent of the Department of Revenue, to seize, levy upon, collect and sell if necessary, the property of the above named support debtor found within the State of Montana, whether real or personal, including credits, sufficient to pay the above obligation plus accumulated interest and the cost of executing this Warrant, and to return the money so collected with this Warrant to the Department of Revenue.

WITNESS the hand and seal of the duly Authorized Agent of the Department of Revenue this ____ day of _____, 19 ____.

(SEAL)

DEPARTMENT OF REVENUE
STATE OF MONTANA
Ellen Feaver
Director of Revenue

Filed _____, 19 ____
Docket NO. _____
_____, County.

BY: _____
Child Support Enforcement Bureau

By: _____
Deputy

Oct. 1, 1981

5

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

Warrant for Distrainment

INSTRUCTIONS:

Responsibility Call Out No. ACTION

FORM CS-51, "Praecipe"--Used to send a Warrant for
Distrainment to the Clerk of Court. Upon completion,
send to the CSE Bureau Chief.

.Enforcement
Specialist

- ① Enter the number spelled out (UPPER CASE) of the District Court for the county where warrant is to be filed.
- ② County where the warrant is to be filed.
- ③ Enter Plaintiff's name as it appeared on the Notice or Order.
- ④ Enter Defendants name as it appeared on the Notice or Order.
- ⑤ Indicate the number of certified copies you wish to receive. If the support debtor has no real property, this number = 1 for the case file.
- * ⑥ Typed name of CSE Employee.
- * ⑦ Enforcement Specialist.
- * ⑧ Enter your office address.

* These spaces may be stamped with your office address stamp.

Departm #39 5/20/80 (406) 444-3004

CS 503.7-BUL

Montana State Library
Documents Section
1515 East 6th Avenue
Helena, MT 59620

section:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

CS BI

(Montana State Library Volume)

subject:

Warrant for Distrain

TO: All Manual Holders

DATE: February 1, 1989

EFFECTIVE DATE: Immediately

The Uniform District Court Rules now specify the format to be followed for any document which is to be filed in a Montana court. The current format of the CS-53 does not conform to these specifications, and it is being replaced with the attached form CS-503.7B (form CS-503.7A is the Praecipe). Manual Section CS 503.7 will be redrafted in the near future to accommodate changes in the Warrant for Distrain process, but the new form should be used immediately. Please destroy all existing supplies of the CS-53.

INSTRUCTIONS (for completion of form):

Responsibility	Call Out Number	ACTION
----------------	-----------------	--------

FORM CS-503.7B, Warrant for Distrain-- Used, when appropriate, to place a lien on the property or assets of a child support obligor.

.Caseworker/
Typist

- ① Enter, in upper case, the number of the District Court in which the Warrant is to be filed.
- ② Enter, in upper case, the name of the county in which the Warrant is to be filed.
- ③ Enter the obligor's name (exactly as it appears in the notice) and address.
- ④ Leave blank (for the Clerk of Court to enter the cause number under which the Warrant is filed).
- ⑤ Enter the IV-D case number.

.Warrant
Control Clerk

- ⑥ Stamp the sequential Warrant control number.

.Caseworker/
Typist

- ⑦ Enter the period(s) during which the support debt accrued (for which Notice has been served and an administrative judgement entered).
- ⑧ Enter the amount(s) of support debt remaining unpaid, for the period(s) specified in item 7.

subject:

CIVIL ENFORCEMENT
ADMINISTRATIVE

section:

Warrant for Distrainment

- (9) Enter the total amount currently due under this Warrant. (If items 7 and 8 are comprised of more than one period, item 9 should be the sum of the amount due.)
- (10) Enter the type of notice .
- (11) Enter the date of service (or acknowledgement).
- (12) Enter the date you are certifying the Warrant.
- (13) Affix the certification seal of the Department of Revenue.
- (14) Sign your name.
- (15) Leave blank (for the Clerk of Court to record filing information).
- (16) Enter the address and phone number of the Regional Office.

.CSE Bureau
Chief or other
designee

.Caseworker/
Typist

STATE OF MONTANA
Department of Revenue
Child Support Enforcement Bureau
P. O. Box 5955
Helena, MT 59604
(406) 444-4615

MONTANA 1 JUDICIAL DISTRICT COURT, 2 COUNTY

* * * * *

IN THE MATTER OF THE SUPPORT DEBT OF:)

3

) CAUSE NO. 4

) WARRANT FOR DISTRAINT

IV-D Case No. 5

) NO. CSE 6

* * * * *

THE PERSON NAMED ABOVE OWING THE SUPPORT OBLIGATION ("obligor") is liable to the Department of Revenue (department) for a support obligation(s) and interest for the period(s) and in the amount(s) shown below, to wit:

PERIOD

SUPPORT DUE

7

8

AMOUNT OF WARRANT: \$ 9

NOTE: The Amount on Warrant reflects only that amount claimed by the department during the period specified. Please contact the department for updated information.

This warrant is filed pursuant to MCA 40-5-241, notice having been provided to the obligor as follows: a Notice of 10 was served in accordance with the Montana Rules of Civil Procedure on the _____ day of 11, 19____.

Upon filing of this warrant as provided in MCA 15-1-704, there is a lien against all real and personal property of the obligor located in the county(s) of filing. The resulting lien

CS-503.7B
(Rev 2/89)

is treated in the same manner as a properly docketed judgement lien, and the department may collect a delinquent support obligation(s) and enforce the lien in the same manner as a judgement is enforced.

WITNESS the hand and seal of the duly Authorized Agent of the Department of Revenue this ____ day of (12)____, 19____.

(SEAL)

(13)

DEPARTMENT OF REVENUE
STATE OF MONTANA
Ken Nordtvedt
Director of Revenue

By: (14)_____
Child Support Enforcement Bureau

Filed _____, 19____

Docket No. _____

(15)

_____, County.

By: _____
(Deputy)

CONTACT ADDRESS: _____

(16)

TELEPHONE: (406) _____

Department of Revenue

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

CHILD SUPPORT ENFORCEMENT

SUBJECT:

CS-54, "Writ of Execution"

WRIT OF
EXECUTION:

ISSUED AFTER DOCKETING THE WARRANT FOR DISTRAINT--
The Department may enforce the judgement by securing a Writ of Execution from the court of original filing.

USE--Limit use to executing on wages and other liquid assets.

Note: For detailed information on property acceptable for execution, see other manual subjects in this section.

PROCEDURE:

Responsibility

ACTION

PREPARATION AND ISSUANCE OF WRIT OF EXECUTION.Enforcement
Specialist

1. Inform the CSE Regional Supervisor of the existence of a docketed Warrant for Distraint and of the obligor/support debtor's failure to make payments in compliance with the judgement.

.Regional
Supervisor

2. Approve the issuance of a "Writ" through a written notation in the case file (or by phone for satellite offices).

Note: The Enforcement Specialist records the date and time of a phone approval in the client's case file.

.Enforcement
Specialist

3. Review the appropriate manual subject covering the type of property under consideration for seizure.
- 4A. Compose Form CS-54, "Writ of Execution" according to the instructions and sample "Writ" that follow.
- 4B. Compose Form CS-55, "Praecipe" (to the District Court Clerk) according to the instructions and sample "Praecipe" that follow.

.Typist

- 5A. Prepare an original and one copy of Form CS-54 according to the instructions of the Enforcement Specialist.

SECTION:

CIVIL ENFORCEMENT:
ADMINISTRATIVE

SUBJECT:

CS-54, "Writ of Execution"

- 5B. Prepare an original and one copy of Form CS-55 according to the instructions of the Enforcement Specialist.
- .Enforcement Specialist 6. Review the typed documents for accuracy and completeness.
- 7A. Assemble the materials for the Clerk of Court in the following order:
- . CS-55, "Praecipe" (original)
 - . CS-54, "Writ of Execution" (original)
- 7B. Forward the materials for the Clerk of Court to the CSE Regional Supervisor.
- 7C. Place the following materials in the case file:
- . CS-55, "Praecipe" (security copy)
 - . CS-54, "Writ of Execution" (security copy)
- .CSE Regional Supervisor 8. Sign the "Praecipe" if the documents are adequate.
9. Mail, or otherwise deliver, the "Writ" package to the appropriate District Court Clerk.
- .Clerk of Court 10. Issue the "Writ of Execution".
11. Return the "Writ" to the CSE office designated in the "Praecipe".
- .Enforcement Specialist 12A. Receive the issued "Writ of Execution".
- 12B. Forward Writ to Sheriff (procedure outlined later in this subject).

NOTE: If the Clerk of the Court agrees, the Writ may be sent directly to the Sheriff from the Clerk. Be sure the Sheriff's PRAECIPE accompanies the Writ in such a case.

SEE FOLLOWING PAGES FOR INSTRUCTIONS AND SAMPLES

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

CS-54, "Writ of Execution"

INSTRUCTIONS:

Responsibility Call Out No. ACTION

FORM CS-54, "WRIT OF EXECUTION"--Based on a docketed Warrant for Distrainment, this form is used to enforce the judgement.

Enforcement
Specialist

- ① Enter the number spelled out (UPPER CASE) of the District Court for the county where the Warrant for Distrainment is docketed.
- ② Enter the county name (UPPER CASE).
- ③ Enter the plaintiff's name exactly as was used in the issuance of the Warrant.
- ④ Enter the name of the defendant exactly as shown on the Warrant for Distrainment.
- ⑤ Strike out the inappropriate sex designation.
- ⑥ Enter each child's first name.
- ⑦ Declining Balance due.
- ⑧ Number spelled out (lower case) of the Judicial District.
- ⑨ Registration county of the Warrant for Distrainment.
- ⑩ Always begins with: CSE-
- ⑪ Same period as on the Warrant.
- ⑫ Warrant Amount as filed.
- ⑬ Name of County.
- ⑭ As entered by the Clerk of the District Court.
- ⑮ Date of registration of the Warrant.
- ⑯ Declining Balance Due.
- ⑰ Describe the property. Bank account No., pay-check, etc. Specify a percentage to be obtained if necessary.

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

CS-54, "Writ of Execution"

CS-54
(10/1/81)

1 IN THE DISTRICT COURT OF THE (1) JUDICIAL DISTRICT OF
2 THE STATE OF MONTANA, IN AND FOR THE COUNTY OF (2)

* * * * *

4 STATE OF MONTANA, acting by)
5 and through the DEPARTMENT)
6 OF REVENUE, ex rel.)

No.

8 (3) Plaintiff,)

7 -vs-)

WRIT OF EXECUTION

8)
9 (4) Defendant.)

* * * * *

11 TO: Sheriff

12 WHEREAS, the above-named defendant has failed to pay his/her (5)
13 child support for the minor children (6)
14 , and owes the total sum of (7), includ-
ing penalty and interest, to date, no part of which has been paid
to the State of Montana; and

15 WHEREAS, the hearing requirements of Section 40-5-226, MCA,
16 have been complied with; and

17 WHEREAS, plaintiff has caused to be filed with the Clerk of
the District Court of the (8) Judicial District of
the State of Montana, in and for the County of (9),
18 the following described Warrant for Distrain:

19 Warrant for Distrain No. (10) for child support
for the period (11), in the amount of \$ (12)
20 including penalty and interest to date, said Warrant for Distrain
having been duly recorded and filed in the Judgement Records of
21 (13), Montana under Docket No. (14),
22 on (15), 19__.

23 WHEREFORE, there exists a Judgement in favor of the plaintiff
and against the defendant hereinabove-named in the total amount
24 of \$ (16). You are further directed to satisfy said judg-
ment by seizure of the following described property:

25 (17)

26
27 and applying the proceeds in conformity therewith, and make return
28 of this Writ at any time and not more than ninety days after your
29 receipt thereof with what you have endorsed thereon and the sums
which you have obtained through enforcement of this Writ.

30 DATED this ____ day of _____, 19__.

31
32 CLERK OF THE DISTRICT COURT

Oct. 1,

SHERIFF

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

CS-54, "Writ of Execution"

SERVICE OF "WRIT" BY THE SHERIFF.Enforcement
Specialist

1. Compose Form CS-52, "Praecipe" (to the Sheriff) according to the instructions and sample "Praecipe" that follow.

.Typist

2. Prepare an original and one copy of Form CS-52 according to the instructions of the Enforcement Specialist.

.Enforcement
Specialist

- 3A. Review the typed documents for accuracy and completeness.

- 3B. Sign Form CS-52.

- 4A. Send the Sheriff the following documents:

- . CS-52, "Praecipe" (original)
- . CS-54, "Writ of Execution" (as issued and one photocopy).

Note: Additional photocopies of the issued Writ may be necessary if you are directing the Sheriff to execute in more than one place.

- 4B. Place the following materials in the case file:

- . CS-52, "Praecipe" (copy)

.Sheriff

- 5A. Serve the "Writ of Execution".

- 5B. If necessary, deduct the cost of execution from the proceeds of the seizure.

6. Send the proceeds of execution and the return on service to the CSE office designated in the "Praecipe."

.Enforcement
Specialist

7. Forward the execution proceeds to the Support Payments Unit.

8. Return the executed Writ to the issuing Clerk of Court.

.Support
Payments

9. Credit the support debtors arrears account with the amount of the collection less the Sheriff's fees and costs.

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

CS-54, "Writ of Execution"

.Enforcement
Specialist

10. Refer to the FMD on "Release of Distraint/Lien".

NOTE: Many sheriffs require a copy of the Writ of Execution for each employer, bank, etc., upon which demand is made.

FURTHER NOTE: Some sheriffs require multiple praecipis rather than Writs.

EVEN FURTHER NOTE: Inquire about practices outside your region with the appropriate Regional Supervisor.

SEE FOLLOWING PAGES FOR INSTRUCTIONS AND SAMPLES

Department of Social and
Rehabilitation Services

section:
Civil Enforcement:
Judicial

subject:
Writ of Execution

CHILD SUPPORT ENFORCEMENT

SUPERCEDES: Section CS 503.8, "CS-54, 'Writ of Execution,'" October 1, 1981.

REFERENCES: Title 25, Chapter 13, MCA; Title 25, Chapter 19, Rule 1, MCA; ARM 46.30.507

POLICY: Operation of Writ of Execution. A writ of execution is an order issued by a court directing a levying officer to seize and sell certain specified property and to deliver the proceeds to a named recipient. In CSED cases the issuing court is the district court where the underlying support order is filed; the levying officer is usually the sheriff of the county where the property is located; the property is owned by the obligor in the case; and the recipient of the net proceeds from the sale of the property is the CSED.

The district court must have a basis upon which to order execution by writ. In CSED cases this basis is a child support order filed with the court. The court issues a writ of execution based on this order at the request of the CSED.

Writ of Execution--General Context. The CSED uses the writ of execution to enforce payment of a support debt in cases where the obligor owns salable property or cash. The writ is an **optional** enforcement tool, appropriate only when certain required (legal) conditions are met and certain additional CSED policy considerations have been applied. A determination about whether to use a writ in a particular case is highly dependent on the facts and overall management of the case.

As an enforcement tool the writ may be used alone, or along with other enforcement methods such as income withholding or tax offset. The enforcement effect of a writ may be produced by seizure of the property alone, if the obligor pays the support debt to recover the property before sale; or, enforcement may be by sale of the property and application of the proceeds.

Writs can be executed on material assets (land, buildings, automobiles, recreational vehicles, livestock, furniture, equipment, jewelry, art, etc.), or on cash or cash-equivalents. Seizable cash may take the form of bank

section:Civil Enforcement:
Judicial**subject:**

Writ of Execution

accounts, securities, "till" cash on a business premises, income or benefits payable to but not yet received by the obligor, or other money assets.

Required Conditions for Obtaining Writ of Execution. A writ of execution is available only when all of the following conditions are met:

- (1) **Support Order**--There must be a child support order in effect in the case in Montana.
- (2) **District Court Basis**--The support order must be on file with the district court issuing the writ. To be "on file" the order must be
 - an order of the district court,
 - an order issued or registered by the CSED and abstracted to the district court, or
 - a foreign order registered directly by the district court.

NOTE: County of Property Irrelevant to Court Basis. The property in question may be located in the same county as the court issuing the writ, **or in a different county.** Every Montana district court has the authority to order any Montana county sheriff to levy against property in the sheriff's county.

- (3) **Status of Asset**--The asset that is the subject of the execution may be either real or personal property, and must be
 - **identifiable and "located."** The CSED must be able to describe the asset and its location sufficiently to enable the sheriff to seize it. The CSED may request a writ for an asset that is not known but suspected to exist, such as an account at a particular bank;
 - **salable or cash.** Non-tangible assets (such as the value of a business's name, license, or clientele) and totally exempt assets (such as welfare, disability, or medical benefits; burial plots; and other property as described in section 25-13-608, MCA) are not subject to writ.
 - **owned by the obligor.** This includes assets (1) held (and owned) now by the obligor or (2) approved for distribution to the obligor at some time in the future. Assets most commonly seized

section:
Civil Enforcement:
Judicial

subject:
Writ of Execution

before distribution are workers' compensation or other insurance settlements; inheritances; proceeds from lawsuits; wage or salary earnings; or proceeds from property, sales, or investments. Approval for distribution must be by the payor, an executor, the court, or some another entity authorized to distribute the asset.

Sole ownership of the asset is not required; assets owned by the obligor and another party "in joint tenancy" are also subject to writ of execution. The region's legal staff should be consulted on all questions of execution on jointly owned assets.

- **located in Montana.** For purposes of obtaining a writ of execution, assets "located" in Montana are (1) assets physically located in Montana, (2) income whose payor is physically located in Montana, or (3) income paid by an out-of-state entity through a Montana agent. See section CS 250.1, Native American Jurisdiction, for further information on enforcing against assets in Native American cases; and
- **able to yield net proceeds beyond any claimed exemptions.** The following exemptions may be claimed by the obligor:
 - > "Homestead" interest in a house up to \$40,000 (house must be obligor's residence --see Title 70, Chapter 32, MCA)
 - > Interest in a primary vehicle up to \$1,200
 - > Other exemptions (interest in tools of trade, personal property, unmatured life insurance) as described in section 25-13-609, MCA.

NOTE: Exemptions Not Applicable Beyond Amount of Obligor's Interest in Property. An obligor may claim an exemption from execution only to the extent the obligor owns an interest in the property. For example, if an obligor owns a \$10,000 equity in a house that is mortgaged for an additional \$35,000 and sold for \$60,000, the obligor's "homestead" exemption would be limited to \$10,000.

section:
Civil Enforcement:
Judicial

subject:
Writ of Execution

- (4) **Support Debt**--The debt need not be adjudicated (reduced to a sum-certain judgment through notice and opportunity for hearing). However, the debt must be for an exact amount, and the CSED must be able to show, if necessary, how the debt accrued. Monthly accumulation records are not required with the writ request. There is no minimum amount set by the court or the CSED for obtaining a writ.

Generally the CSED uses the Debt Computation Worksheet to specify and document accrual of debt amounts for its own purposes. A region may, at its discretion, submit a Debt Comp with the writ request. The region may also set a minimum debt amount for requesting a writ.

NOTE: Status of Obligor Not Related to Writ Requirements. Location of the obligor is not necessary to proceed with a writ of execution. Also, the CSED does not need personal jurisdiction over the obligor: the court has subject matter jurisdiction to enforce its own order in Montana.

Further Considerations. Although technically eligible, not all cases that meet the above requirements will be suitable for enforcement by writ of execution. The CSED will also consider the following criteria in determining whether to proceed with a writ in a particular case:

- (1) **Value of Asset at Sale**--Generally, the expected net proceeds from the sale of the asset should be great enough to justify the CSED time spent obtaining the writ. In some cases, however, it may be helpful to obtain a writ even when net proceeds will be small (to indicate to the obligor the CSED's continued interest in the case, or to encourage the obligor to pay the debt to keep the property from being sold). Net proceeds are equal to sale price less
- the amount of any prior liens on the property,
 - any fees charged by the sheriff for storage or maintenance of the asset during the time between seizure and sale (including feeding livestock),
 - payment to a joint owner of the asset proportionate to that person's interest in the asset
 - the value of any exemptions claimed, and
 - any fees charged by the sheriff for execution of the writ.

None of these costs is certain to occur--prior liens

section:Civil Enforcement:
Judicial**subject:**

Writ of Execution

may have been paid off, the obligor may fail to claim exemptions (but, see NOTE below), or the sheriff may choose not to charge any fees. The caseworker should research the conditions surrounding the proposed sale of an asset to determine any likely costs.

NOTE: Exemption Policy. When the CSED knows an exemption will be claimed **or could be claimed**, and the net expected proceeds after any possible exemptions would be small, there may be an appearance the CSED is only taking the property "to harass," and is guilty of abuse of process. The region's legal staff should be consulted in all exemption situations, to ensure the enforcement action is an appropriate use of authority.

NOTE: General Caution in Obtaining Writs Against Non-Cash Assets. In addition to the deductions from sale price listed above, the CSED may incur substantial, pre- and post-sale expenses or responsibilities in executing on non-cash assets. For example, the CSED may be required to make detailed arrangements in aid of the seizure, transportation, storage, maintenance, sale, and final disposition of the asset; give notice of CSED actions to other parties holding an interest in the property; or take other actions required in converting the asset to a cash amount and distributing the receipts according to law. (Montana law also requires writ requestors to post a bond when substantial costs will be incurred by the sheriff, but Montana state agencies are exempt from this requirement (section 25-1-402, MCA).) **Regions should carefully consider the total "costs" to the CSED of executing on any non-cash assets before initiating a writ.** It is usually not practical to execute on jointly owned non-cash assets.

- (2) **Role in Reducing Support Debt**--Generally a writ is appropriate only when debt reduction through routine methods (income withholding, regular voluntary payment) has been unacceptable. For non-paying cases a writ (if available) should always be considered. For paying cases, the region must use its discretion, as shown in the following examples:

EXAMPLE 1: The CSED is enforcing an obligor's current obligation and support debt through income withholding; there has been a hardship determination in the case, and the support debt is very large. An

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asset becomes available for execution by writ. The CSED may wish to proceed with the writ, to decrease the payoff time for the debt.

EXAMPLE 2: Although no employer is located, an obligor is making regular payments toward both current support and arrears, missing a payment only infrequently. The arrears payments are sufficient to pay off the debt within a reasonable time. An asset becomes available for execution by writ. The CSED may choose not to seize the asset, allowing the obligor to continue what has been an acceptable payment schedule.

- (3) **Effect on Ability to Pay Support**--Generally a writ is appropriate only when the asset is not tied to the obligor's ability to pay support. For example, where the obligor owns inventory or equipment used in an income-producing business, the CSED may determine the asset is more valuable in the hands of the obligor than converted to cash. In a different example, the obligor may plan to use a soon-to-be-received asset (such as an inheritance) to set up or improve the output of a business--if the CSED believes the plan is dependable it may wish to allow the obligor to keep some or all of the asset for this purpose.
- (4) **Convenience Compared to Other Forms of Enforcement**--A writ may be preferable to certain administrative means of enforcing the support debt if the administrative method
- involves significantly greater effort or cost on the part of the CSED
 - involves a significant risk of the obligor dissipating the asset before the CSED can act (if the administrative method includes notice to the obligor, for example, and there is reason to believe the obligor will sell or spend the asset or remove it from the Montana court's jurisdiction),
 - involves a longer lead time before payment,
 - will net less money toward the support debt, or
 - will be less effective or less direct overall in enforcing payment.

Case Management: Writ of Execution Versus Warrant for Distrainment. In cases where the seizure and sale of assets is appropriate to reduce a support debt, the CSED may initiate enforcement in one of two ways: (1) judicially, ()

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by writ, or (2) administratively, by warrant for distraint. A warrant for distraint operates much like a writ of execution except that the warrant for distraint

- is issued by the CSED and sent directly to the sheriff or levying officer without going through the court; does not require a district court "basis"
- is issued for adjudicated debts only
- can be issued at any time after the debt accrues (is not limited to issuance within a specified time after accrual, for debts incurred before October 1993)

Because of the requirement for an adjudicated debt, the warrant must be preceded by a notice or other proceeding alleging a specific debt and providing the obligor with an opportunity to dispute the debt amount. In general, a writ may be preferable to a warrant if the debt includes unadjudicated amounts; a warrant may be preferable if the entire debt amount has been adjudicated and (a) quick enforcement on the asset is essential, or (b) the support order is a foreign order not registered in Montana.

In practice, regions may find some county sheriffs are more willing to serve court-issued writs of execution than CSED warrants for distraint, probably because the CSED's direct distraint authority is still relatively new (at the time of this writing).

Executing on "Payable" Assets--Timing Considerations. It is important to determine, as closely as possible, when a payable asset will be distributed to the obligor, and to time the issuance of the writ accordingly. If the final approval or order for the payment has not been given, the obligor may be able to have the payment made to another recipient. If the payment is completed more quickly than anticipated, the obligor may be able to dispose of the asset before the writ can be served.

Executing on "Payable" Assets--Montana Agents. To be enforceable in Montana, a writ of execution for an asset held by an out-of-state payor must be served on a Montana agent of that payor. It is not necessary for the Montana agent to ever hold or process the asset, as long as it represents the payor for purposes of service of process. Official Montana "service of process" agents for out-of-state corporations are listed with the Secretary of State.

NOTE: Montana Insurance Commissioner. For purposes of service of process, the Montana Commissioner of Insurance

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is a Montana agent for all out-of-state insurance companies having Montana agents. The CSED may at times find it more convenient to serve a writ directly on the Commissioner (via the Lewis and Clark County Sheriff) than to try to locate and serve the individual Montana agent for the company. (The Montana Secretary of State is not an agent for service of out-of-state corporations, however.)

Recovery of Property by Obligor. Generally, the CSED will allow the obligor to recover seized property before it is sold if the obligor pays the CSED the full amount of the support debt, or a partial amount agreed to by the CSED. The CSED will then notify the sheriff the judgment has been satisfied or partially satisfied, and the property should be returned to the obligor. Recovery of property after sale is limited to "redemption" of real property, and must be arranged by the obligor with the purchaser within one year.

Sheriff's Time Frames: Executing on Writ, Forwarding Proceeds. The sheriff must execute a writ within 60 days after receiving the writ. Execution includes seizing and, if necessary, selling the asset identified in the writ. The sheriff must then return any proceeds of the execution to the CSED within 60 days, but not sooner than 10 days, after execution.

Court Requirements. All documents presented for filing with the district court must conform to the format and paper-content requirements of the Montana Uniform District Court Rules (see 25-19-Rule 1, MCA). These requirements apply to the Writ of Execution itself and the application or affidavit attesting to the fact basis (see PROCEDURES). The requirements do not apply to praecipes, although regions may find it more convenient to apply the court standards to these or other accompanying documents as well.

Certain "return" requirements also apply. The CSED must return **both** the original issued writ and the sheriff's return-of-service document to the Clerk of Court for filing (see PROCEDURES). **Regional compliance with these return requirements is mandatory.** The Clerk of Court may deny future applications for writs of execution if the CSED has failed to return a previous writ.

Distribution of Proceeds. The following three restrictions apply to the distribution of writ proceeds:

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- (1) **Proceeds may be applied only to the case for which the writ was issued.** Because the district court's writ authority over an obligor extends only to enforcement of the support order the court has issued or filed, the writ may not be used to enforce debts incurred by the obligor in other cases.
- (2) **Proceeds may be applied only to the specific debts for which the writ was issued.** In applying to the court for a writ in a particular case, the CSED certifies the total amount of the debt the writ will enforce, and states how and through what date the debt has been incurred. Amounts owed by the obligor when the proceeds are received are payable only to the extent the amounts were included in the debt basis of the writ.
- (3) **TEMPORARY RESTRICTION: Until ARM 46.30.507 (1995) is adopted, proceeds may not be applied to current support.** Writs of execution are authorized in Montana only for the enforcement of judgments. Until the CSED's Administrative Rule re: distribution of collections is implemented, writ proceeds must be distributed to "judgment" accounts only. Judgment accounts are accounts for fees, support arrears, and fines.

SEARCHS will automatically apply restriction (3) above while the restriction is in effect. During that time **proper back-up documentation from the region--attached or noted directly on the check--identifying the payment source as a writ of execution will be essential for correct distribution.**

Where restriction (1) or (2) above applies, the region **must** enter on SEARCHS a Manual Payment Instruction (MPI) specifying the correct distribution of writ proceeds, as follows:

Multiple Obligees--Where the obligor owes arrears or other debt in more than one case, the MPI should target the payment to the account(s) for the correct obligee.

Unavailable Debt--Where the obligor's total debt in the case includes amounts not certified to the court (for example, the debt was incurred after the writ was requested, or was incurred earlier than six years

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before the request (see "Statute of Prohibition" below)), the MPI should specify, by account, any amounts to be left unpaid.

Caseworkers should determine whether an MPI will be needed **before** releasing a writ proceeds check for posting to SEARCHS accounts.

Statute of Prohibition for Debts Accrued Before October 1993. All support debts incurred before October 1, 1993, are subject to the general time limit governing writs of execution--that is, the Clerk of Court cannot issue a writ to enforce a debt incurred more than six years before the writ is requested (the "request" date is the date the court receives the CSED's application). This restriction can be removed by special "leave of the court," but obtaining the exception often has practical disadvantages. The region's legal staff should be consulted about pursuing any "prohibited" amounts. For support debts incurred on or after October 1, 1993, the Clerk of Court may issue a writ at any time within 10 years after the termination of the support obligation in the case.

In calculating the total debt amount to be submitted to the court, **the region must first determine the correct debt history by assuring all payments received in the case have been applied to the oldest debt first.** Then, using the corrected information on amounts and accrual dates for the unpaid debt, the region must identify and (generally) exclude any amounts that were incurred both (1) before October 1, 1993, **and** (2) more than six years before the writ will be requested.

NOTE: Inclusive Determination of Debt--Certain Districts. A few district courts in Montana require leave of the court for all writs, regardless of the debt accrual date. Regions may choose to include "prohibited" debts in the amounts certified to these courts.

PROCEDURES

The following basic actions must be performed by the CSED for successful writ processing. **However, individual staff responsibility for a given action may vary from region to region.** Responsibility may be assigned to the caseworker, the supervisor, the paralegal, or the staff attorney, depending on regional preference. Regional variations also occur in the individual steps under each basic action.

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Please identify the steps and responsibilities that apply to your region; you may wish to add to these pages any specific internal (written) procedures in use in your region.

Asterisked steps (*) may require entry of system case note. See "writ" events listed on SEARCHS events menus.

Responsibility ACTION

- Caseworker 1. Identifies case appropriate for writ of execution by applying the following tests:
- a. Obligor in case has **identifiable asset(s)**.
 - b. Case satisfies **required conditions** for writ (support order, asset, and debt status--see "Required Conditions," POLICY).
 - c. Case facts relating to **further considerations** are positive (asset value, enforcement effect, and comparative convenience--see "Further Considerations," POLICY).

If case is appropriate for writ enforcement except that support order is not on file in Montana district court, takes actions to abstract order to district court. For foreign orders, obtains district court basis by either (1) registering foreign order with CSED and then abstracting to district court or (2) arranging for registration of order directly with court.

Identifies county where **asset is located**--this is the county whose sheriff must serve the writ.

Identifies judicial district court where **support order is filed**--this is the judicial district whose Clerk of Court must issue the writ.

If asset identified for execution is non-cash asset, immediately notifies and works with CSED staff attorney to coordinate actions by CSED, sheriff, and others for successful seizure, maintenance, sale, and proceeds distribution.

- Caseworker *2. Prepares writ application package for Clerk of Court.
or Legal Writ package contains
Staff
- (1) Writ of Execution (original and one copy)--directing the sheriff of the county identified

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in step 1 to levy against property described in the writ, and to return service and any proceeds to the CSED. Document may be SEARCHS document (form CS-503.8A); SEARCHS document modified for specific case; or non-SEARCHS, region-specific document maintained as word processing file.

- (2) Application or affidavit (original)--swearing to
 - debt amount and how accrued, and
 - CSED authority to enforce the case, and bearing notarized signature of CSED staff attorney (or, at region's option, of caseworker). Document varies from region to region; maintained as word processing file.
- (3) [Optional] Form CS-501.1B, Debt Computation Worksheet (original)--showing monthly accrual of support debt and (at region's option) bearing notarized signature of caseworker.
- (4) Praecipe to Clerk of Court, or equivalent (original)--asking the Clerk of Court for the judicial district identified in step 1 to
 - issue, or have issued, the enclosed Writ of Execution;
 - conform a copy of the issued writ (mark or stamp the submitted copy so it becomes an official court copy); and
 - send the issued writ directly to the appropriate sheriff with the enclosed sheriff's praecipe (item (5) below) and the conformed copy of the writ.

Document may be SEARCHS document (form CS-503.7A); SEARCHS document modified for specific case; or non-SEARCHS, region-specific document maintained as word processing file.

NOTE 1: Return-of-Copy Option. The praecipe may, at the region's option, ask the Clerk of Court to produce and send a second conformed copy of the writ directly to the CSED.

NOTE 2: Return-of-Writ Option. The praecipe may, at the region's option, ask the Clerk of Court to send the issued writ (with the conformed copy) directly to the CSED for forwarding to the sheriff.

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- (5) Sheriff's Praecipe (original)--directing the sheriff of the county identified in step 1 to
- execute the issued writ by seizing the property described in the praecipe, and
 - send the return of service and any proceeds of the execution to the CSED.

Document may be SEARCHS document (form CS-401.3C); SEARCHS document modified for specific case; or non-SEARCHS, region-specific document maintained as word processing file. (This document not included in package to Clerk of Court if region elects return-of-writ option in item (4).)

- (6) [Optional] Addressed stamped envelopes for use by Clerk of Court and sheriff (regional differences apply).

- (7) If applicable, additional documents
- required by specific district court or sheriff's office for execution of writ (for example, Answer to Garnishment, Notice of Levy);
 - connected with seizure and sale of non-cash asset (for example, arrangements for sheriff's sale; agreements about large execution costs, such as for maintenance of livestock; notice to holders of superior claims); or
 - required by specific CSED regional procedures for execution of writ (for example, Notice of Levy).

Consult your CSED staff attorney or paralegal to determine which of the above documents may apply.

NOTE: Court Documents. Items (1) and (2) above are subject to special format and paper requirements for district court filings (see "Court Requirements," POLICY).

Sends package comprising items (1) through (7) above by regular mail to Clerk of Court for judicial district identified in step 1; retains copy of package for file.

- *3. If region elected return-of-copy option in step 2, monitors for return of conformed copy directly from

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Clerk of Court; resolves any problems concerning issuance of writ.

- *4. If region elected return-of-writ option in step 2, monitors for return of issued writ and conformed copy from Clerk of Court; resolves any problems concerning issuance of writ. Prepares Sheriff's Praecipe as in step 2 above and sends to sheriff by regular mail with issued writ and conformed copy.
- *5. Monitors for sheriff's return of service (see "Sheriff's Time Frames," POLICY). Generally, return package will include
 - (1) Sheriff's return-of-service document
 - (2) Original (issued) writ of execution
 - (3) Check for proceeds of execution
 - (4) (Optional) Additional documents as appropriate (for example, Answer to Garnishment from third party).
- 6. Prepares filing package for Clerk of Court containing
 - (1) Original (issued) writ of execution
 - (2) Sheriff's return-of-service document (original)
 - (3) Praecipe to Clerk of Court (form CS-503.7A, original), asking Clerk of Court to file attached documents with district court
 - (4) If applicable, Satisfaction of Judgment or Partial Satisfaction of Judgment. Document is non-SEARCHS document, usually maintained in region as word processing file; subject to format and paper requirements of district court (see "Court Requirements," POLICY).
 Retains copy of package for CSED case file.

NOTE: Return of Original Writ Imperative. This step is crucial in preserving successful relations with the Clerk of Court, and in obtaining future writs of execution.

- 7. Immediately upon receipt of proceeds in regional office, arranges for processing of check by appropriate regional staff, as follows:

Regional
Staff

- a. Copies check, sends original to SRS Fiscal Bureau with appropriate "back-up" documentation (or notation on check) **identifying pay source (writ of execution)** and obligor (SEARCHS participant identification number); retains copy

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for case file.

- b. In cases involving multiple obligees or other special distribution requirements (see "Distribution of Proceeds," POLICY), prepares Manual Payment Instruction (MPI) to supplement information submitted with check, and enters MPI on SEARCHS. (At its option, a region may choose to enter an MPI for every case involving writ proceeds; however, this is not required in most cases.)
- c. Informs Regional Manager of receipt of proceeds and net dollar amount, for lump-sum collections tracking purposes.

Department of Revenue

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CHILD SUPPORT ENFORCEMENT

Using Liens

INTRODUCTION:

This section is intended to define the types and characteristics of liens available under Montana law, to set a policy for establishing liens in appropriate cases, and to set forth procedures for determining when lien establishment is appropriate. Regulations at 45 CFR § 303.103 require that liens be imposed against real and personal property in all appropriate cases.

Under Montana law, liens are automatically imposed on real property whenever orders, abstracts or judgments are docketed in Montana district courts. Consequently, no CSEB action to establish liens against real property is required in many cases.

CSEB action may be required, in some cases, to establish liens on personal property, or to extend existing liens to additional Counties. The procedures in this section are intended for use in determining when CSEB action with respect to establishing liens is necessary.

DEFINITIONS:

Liens are charges, securities or encumbrances on property, preventing sale or transfer without permission of the lienholder. The CSEB can become a lienholder as a result of an assignment, either upon the payment of public assistance or upon an application for support enforcement services.

PASSIVE EFFECT

Liens do not by themselves give the CSEB authority to seize or sell an obligor's property. Nevertheless, liens are effective passive enforcement devices because the CSEB can often insist on full or partial payment of past due support in return for permission to sell encumbered property. Some or all of the proceeds of sale can usually be directed to the CSEB as part of the transaction. It is the sale itself which creates the need to pay the lien, as well as the funds to do so.

RELEASES

CSEB permission to sell encumbered property is granted using a "Release of Lien", if a support debt

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is paid-in-full, or using a "Partial Release of Lien", if it is not. Liens follow encumbered real property sold or transferred without a full or partial release, and the CSEB may recover the lien amount from the new owner or title insurance company (if any) up to the value of the obligor's former interest in the property. Liens follow personal property only if the new owner had actual notice of the lien at the time of sale.

Failure to release all liens upon full payment of delinquent support may subject the CSEB to civil liability. See CS 503.7A for forms and procedures for full and partial releases of lien on Warrants for Distraint. Consult a CSE staff attorney for full or partial releases of other liens.

REAL PROPERTY

Real property is defined as land and things attached to the land. To be effective against real property, a lien must be filed in the County where the land is located. If a support obligor owns land in more than one County, liens must be filed in each and every County in which the obligor owns land.

PERSONAL PROPERTY

Personal property is defined as everything else which can be owned that is not real property. Some liens (such as UCC and vehicle liens) are effective against affected property, no matter where it is located. Other liens are effective only against property located in the counties in which the lien is filed. Consult your CSE staff attorney if you have questions concerning liens and their characteristics.

EXEMPT PROPERTY

Liens (with the sole exception of consensual liens) do not attach to property which is exempt from execution under Montana law. Examples of exempt property include:

- health aids; social security benefits; public assistance benefits; veteran's benefits;

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disability or illness benefits; medical, surgical or hospital benefits to the extent they will be used to pay the provider of the care; maintenance and child support; and, burial plots for the obligor and his family;

- personal items such as household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops and musical instruments up to \$600.00 per item and \$4,500.00 total value;
- one motor vehicle not exceeding \$1,200.00 in value;
- implements, professional books, or tools of the obligor's trade up to \$3,000.00 in value;
- unmatured life insurance up to \$4,000.00 in value;
- real property on which the obligor resides (homestead exemption) up to \$40,000.00 in value.

See your CSE staff attorney or Regional Supervisor for a determination whether any of a support obligor's property is exempt.

INVOLUNTARY SALES

Forced sales of encumbered property can be accomplished by Writs of Execution (see CS 503.8), contempt proceedings (see CS 504.15), or proceedings in aid of execution (consult a CSE staff attorney).

Prior lienholders must be paid-in-full and the lien released prior to any forced sale, however. Consult a CSE staff attorney to determine the priority of liens on encumbered property.

LIENS IMPOSED BY OPERATION OF LAW

Liens on non-exempt real property are created in the County of docketing by operation of law whenever:

- court-ordered or abstracted administrative support obligations become due and unpaid, or,

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- court-ordered money judgments are entered, or,
- Warrants for Dstraint are filed, or,
- consent orders or abstracted administrative decisions and orders establishing arrears are filed in district courts.

In addition to liens on real property, properly filed and docketed Warrants for Dstraint create support liens in the County of docketing on all non-exempt real and personal property.

CONSENSUAL LIENS ON PERSONAL PROPERTY

In addition to the liens imposed by operation of law, voluntary liens on property can be obtained with obligors' cooperation. For example, obligors can grant mortgages on real property (consult a CSE staff attorney), UCC liens on personal property (see CS 508.13) or liens on vehicles (including mobile homes) which may only be obtained by noting the lien on the appropriate title document and mailing it, along with \$4.00, to the Registrar of Motor Vehicles (consult a CSE staff attorney).

Voluntary liens are effective enforcement tools because they can be applied to otherwise exempt property, such as tools of the obligor's trade and homesteads. Obligor may be willing to grant the CSEB a voluntary lien in order to avoid the application of some other enforcement technique such as Writs of Execution, contempt proceedings or bonding. Also as part of a bonding case, the court can order an obligor to encumber property as security for payment of current support (see CS 508.5, "Utilization of Bonding for Future Payments").

TRANSCRIPTS OF DOCKET

Liens docketed in any County in Montana may be extended to other Counties by filing "Transcripts of Docket" certified by the Clerk of the district court in which the original order, judgment, abstract or Warrant is filed or registered with the Clerk of the district court of each and every county in which the obligor owns non-exempt property.

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POLICY:

Liens on a support obligor's non-exempt real or personal property, or both, shall be imposed as follows:

1. *General judgment liens* are automatically imposed pursuant to MCA § 25-9-301 by operation of law on all support arrears accrued under the terms of:
 - a) Montana district court judgments or orders; and,
 - b) judgments and orders of other states registered in Montana pursuant to MCA §§ 40-5-140 and 40-5-141; and,
 - c) administrative judgments and orders abstracted to district courts pursuant to MCA § 40-5-227.

Upon the occurrence of a support delinquency, other liens shall be imposed as follows:

2. *Liens on real and personal property* shall be imposed in all appropriate cases pursuant to MCA § 15-1-701 on all Warrants for Distrain filed pursuant to MCA § 40-5-241 based on Notices of Support Debt issued pursuant to MCA § 40-5-222, Notices of Support Liability issued pursuant to MCA § 40-5-223, or based upon written agreements approved by a CSEB Hearing Officer. Warrants for Distrain shall be sought in accordance with the procedures below.
3. *Consensual liens* shall be imposed in all appropriate cases on an obligor's non-exempt real or personal property in accordance with law whenever a support obligor executes the necessary documents. Consensual liens may be sought in accordance with the procedures below.
4. *Transcripts of docket* shall be filed in all appropriate cases in accordance with the procedures below in each and every county of Montana (other than the county in which an order, judgment, or Warrant for Distrain is registered, abstracted or docketed) in which an

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order, judgment, or Warrant for Distrainment is registered, abstracted or docketed) in which an obligor owns non-exempt real property. Transcripts of docket shall also be filed in all appropriate cases in each and every county in Montana (other than the County in which a Warrant for Distrainment is filed and docketed) in accordance with the procedures below whenever an obligor subject to a Warrant for Distrainment owns non-exempt personal property in those counties.

5. *Foreign support judgments or orders* (those from courts of competent jurisdiction other than Montana's) shall be reduced to Warrants for Distrainment in all appropriate cases based upon Notices of Support Debt issued pursuant to MCA § 40-5-222 in accordance with the procedures below whenever a support obligor owns non-exempt real property or personal property in Montana.

APPROPRIATE CASES DEFINED

For purposes of this section, and the procedures below, an "appropriate case" is defined as a case with *ALL* of the following characteristics:

- a support order or judgment; and,
- an outstanding delinquency greater than \$150.00; and,
- the order is not enforceable by income withholding; the term "not enforceable by income withholding" is defined as a case in which the obligor either receives no income or receives income from a source which would not be a "payor" (see CS 510.1), or a case in which income withholding is in place, but the case record indicates that arrears will not be paid-in-full within two years.

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PROCEDURE:

Responsibility

ACTION

PROCEDURES FOR DETERMINING IF CSEB ACTION TO
ESTABLISH OR EXTEND LIENS IS REQUIRED.Caseworker/
Typist

1. Reviews case record to determine if it is an "applicable case".
2. If so, reviews the case record to determine if the obligor owns any non-exempt real or personal property:
 - a) If the obligor owns non-exempt property in the State of Montana, proceeds to step 3; or,
 - b) If the obligor owns property in the State of Montana which is or may be claimed to be exempt, proceeds to step 4; or,
 - c) If the case record reveals no non-exempt property owned by the obligor in the state of Montana, but reveals the existence of non-exempt real or personal property in another State or in a foreign country with which Montana has a reciprocal support enforcement agreement, initiates appropriate interstate enforcement remedy (see CS 506, "Interstate Enforcement", and CS 508.15, "Full IRS Collection Services"; or,
 - d) If the case record reveals no non-exempt property owned by the obligor anywhere in the United States or in any foreign jurisdiction with which Montana has a reciprocal support enforcement agreement, takes steps necessary to locate assets (see CS 300.1, "Location" and sections following).
3. Reviews the case record to determine if a Warrant for Distraint has been previously filed in the case:

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- a) If so, but the amount of the Warrant does not approximate the amount of the delinquency, the Warrant may need to be updated. If the need to update the warrant is identified, contacts a CSE staff attorney for forms and procedures. Upon completion, proceeds to step 3(b).
 - b) If so, and the amount of the Warrant approximates the amount of the total support delinquency, reviews the case record to determine if any of the obligor's non-exempt property is located in a county in Montana in which no Warrant or transcript of docket is filed:
 - 1) if not, no further action to impose liens is necessary; or,
 - 2) if so, skips to step 5.
 - c) If not, but no non-exempt personal property is owned by the obligor, and the support obligation is issued, abstracted or registered in a Montana district court, reviews the case record to determine if any non-exempt real property is located in a county in Montana in which no order, judgment or transcript of docket is filed:
 - 1) if not, no further action to impose liens is necessary; or,
 - 2) if so, skips to step 5.
 - d) If not, and non-exempt personal property is owned by the obligor in the State of Montana, contacts a CSE staff attorney for a Writ of Execution or forms and procedures to obtain a Warrant for Distrainment, as appropriate. If a Warrant for Distrainment is obtained, returns to step 3(b).
4. If the obligor owns exempt real or personal property in the State of Montana, and the case record indicates that the obligor is likely to be cooperative, attempts to secure

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one or more of the following consensual liens:

- UCC lien (see CS 508.13)
- mortgage on real property (first or subsequent)
- lien on vehicle

Consults a CSE staff attorney for instructions on securing consensual liens.

5. If the obligor owns non-exempt real property in a county in Montana in which no order, judgment, abstract or Warrant for distraint is filed, registered or docketed, files a transcript of docket pursuant to MCA § 25-9-202 in each and every applicable county. Mails a transcript of docket, certified by the Clerk of the district court in which the original order, judgment, abstract or Warrant is filed or registered, to the Clerk of the district court of each and every appropriate county.

If the obligor owns non-exempt personal property in a county in Montana in which no order, judgment, abstract or Warrant for distraint is filed, registered or docketed, contacts a CSE staff attorney to determine if a Writ of Execution is appropriate. If not, files transcripts of docket in each and every appropriate counties.

NOTE -- RELEASE ALL LIENS. If one or more transcripts of docket have been filed in a case, any full or partial releases of lien MUST be filed in all applicable counties.

See a CSE staff attorney for forms and procedures required for filing transcripts of docket.

Department of Revenue

section:

CIVIL ENFORCEMENT: JUDICIAL

subject:

CHILD SUPPORT ENFORCEMENT

Contempt of Court

POLICY:

When a court issues an order requiring a party to act, or to refrain from acting in some manner, that order must be obeyed until it is modified or terminated by further order of the court. Disobedience to a court order is a contempt of court, punishable by fine or imprisonment or both.

Unless the contempt is committed in the actual physical presence of the judge, the party injured by the disobedience must bring the contempt to the court's attention. The usual method of bringing the disobedience to the court's attention is a "show cause hearing." That procedure is governed by the Montana Rules of Civil Procedure, the Uniform District Court Rules and any applicable local rules, and for that reason is not included here. See a CSE Staff Attorney for details.

A civil contempt must be proved by "substantial evidence." The CSEB must assemble the necessary evidence before the case is referred to the CSE Staff Attorney for prosecution.

NOTE: Contempt should be considered a remedy of last resort. It should be undertaken only when all other applicable remedies have been attempted without success.

CRITERIA FOR CONTEMPT PROCEEDINGS

1. There must be a Montana District Court order, an abstracted administrative order, or a registered foreign court order which requires the obligor to pay support; and,
2. The obligor must have knowledge of the support order; and,
3. The obligor must have failed to comply with the support order; and,
4. The obligor's failure to comply must not be the result of an inability to pay the ordered support.

section:

CIVIL ENFORCEMENT: JUDICIAL

subject:

Contempt of Court

THE COURT ORDER

The first prerequisite to a contempt proceeding is the existence of a Montana District Court order or its equivalent. There are two common equivalent orders which may be enforced by a contempt proceeding. The first is an administrative support order which has been abstracted and docketed with the district court. The second is an order from a court of competent jurisdiction--other than a Montana district court--which has been registered or otherwise filed or adopted by a Montana district court, and appears in the judgment docket of the Clerk of District Court.

THE OBLIGOR'S KNOWLEDGE

Proof that the obligor had knowledge of the court's order is critical to a contempt proceeding. The easiest proof of the obligor's knowledge is a recital in the order that the obligor was present in court. Consult with a CSE Staff Attorney regarding other proof possibilities.

EVIDENCE OF NON-COMPLIANCE

A third major element of proof in a contempt proceeding is proof of the obligor's failure to pay the ordered support.

If the obligor was ordered to pay through a clerk of court or the department, certified copies of the payment records are necessary. If the obligor was ordered to pay the custodial parent directly, an affidavit of payments received by the custodial parent is necessary. In addition, the custodial parent must be available to testify in court.

NOTE: The custodial parent's affidavit must be based on payments received and accounted for, not merely on the fuzzy memory that the obligor "probably" owes money. The custodial parent may be liable for false swearing, and the department for attorney fees, in the event a contempt action is brought based on an inadequate affidavit.

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EVIDENCE OF ABILITY TO PAY

Although not an element of the contempt charge, the obligor's inability to pay the ordered support is the most likely defense. Therefore, evidence must be gathered to rebut the defense if the obligor's inability to pay is voluntarily assumed. Such circumstances include:

- The obligor claims to be unemployed, but it can be proven there has been no job search or a valid offer of employment has been refused.
- The obligor has only a part-time job and it can be proven that full time employment has been refused.
- It can be proven the obligor has quit full-time employment to return to school.
- It can be proven the obligor has incurred unnecessary and frivolous bills.
- The obligor has transferred real or personal property to another's name and it can be proven that this was done in order to avoid the responsibility to pay support.

PROCEDURE:

Responsibility

ACTION

Caseworker/
Typist

1. Consults with Regional Supervisor and CSE Staff Attorney to determine whether a case is appropriate for contempt proceedings.
2. If deemed appropriate, conducts necessary investigation to assemble evidence for legal proceedings.
3. Upon completion of investigation, submits to Regional Supervisor for review and approval.

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subject:

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Contempt of Court

.Regional
Supervisor

4. Reviews the case file, to determine whether case should be referred for legal enforcement, or returned to the caseworker/typist for further investigation.
5. Refers to CSE Staff Attorney, if appropriate.

.CSE Staff
Attorney

6. Reviews the case file for completeness and accuracy. If review indicates that additional information is needed, makes request to Regional Supervisor.

NOTE: It is the caseworker's responsibility to gather and verify all the evidence necessary to support the contempt action. After referral to the CSE Staff Attorney, the caseworker is directed to assist the Staff Attorney as may be necessary to prepare and prosecute the case (including testimony in court).

7. Prepares and prosecutes the contempt proceeding, in accordance with statutory requirements and applicable rules of procedure.
8. Prepares findings of fact, conclusions of law, and order, as necessary.
9. Upon receipt of order, returns the case file to caseworker/typist for monitoring.

.Caseworker/
Typist

10. Monitors for compliance with order of court.

Department of Revenue

section:

CIVIL ENFORCEMENT: JUDICIAL

subject:

CHILD SUPPORT ENFORCEMENT

Use of Federal District Courts

POLICY:

A state responding to an interstate referral or URESA submitted by the Child Support Enforcement Bureau (CSEB) has 60 days to act to enforce a support order. If that state fails to act, the CSEB may ask the federal Office of Child Support Enforcement (OCSE) Regional Representative in Denver for permission to use the U.S. District Courts. The federal District Courts have jurisdiction, in some instances, to enforce support orders. Before an action can be initiated in U.S. District Courts, the OCSE must certify the case, on the basis of the application submitted.

A case certified for proceedings in U.S. District Court is evidence that the responding state failed to comply with federal regulations, and as a result, penalties could be imposed against that state. Because of this potential punitive effect, great care must be taken in reaching the decision of whether or not a case should be certified. The final decision of whether or not a case should be submitted for certification rests with the Bureau Chief.

Once the CSEB receives notification that a case has been certified for enforcement through the U.S. District Court, the case should be referred to a CSEB Staff Attorney for preparation of the necessary legal documents and the prosecution of the case. The case may be filed in the district in which the claim arose, where the obligee resides, or where the obligor resides. Forms and procedures for the legal unit are governed by the Federal Rules of Civil Procedure and local District Court rules, and for that reason are not included in this manual.

CASES ELIGIBLE FOR CERTIFICATION

A case must meet the following requirements to be certified by the Regional Representative, Region VIII, OCSE/FSA:

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1. The CSEB must be providing services pursuant to Title IV-D of the Social Security Act;
2. There must be a support order;
3. The obligor must be located in the responding state;
4. An interstate administrative or URESA referral must have been submitted to the responding state, in the form required by the state, accompanied by all necessary forms and documents;
5. The responding state must have failed to undertake enforcement action against the obligor, or otherwise failed to secure compliance with the order within 60 days of receipt of the complete referral;
6. The CSEB must have notified the responding state's central IV-D office of its intention to request certification to use the federal courts and received no acceptable response within 30 days of the notice;
7. The use of federal court is the only reasonable method to enforce the order.

PROCEDURE:

Responsibility

ACTION

.Caseworker/
Typist

1. If a responding state has taken no enforcement action within a 60 day period following that state's acknowledgment of receipt of an administrative or URESA referral, sends a status request to the responding state, and calendars for one month.
2. If no response to the status request is received, refers case to Regional Supervisor for review.

Section:

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Use of Federal District Courts

.Regional
Supervisor

3. Reviews case file to determine whether an application to use the federal courts is appropriate:

- a. If not, notes in the case file, and returns for further investigation/action.
- b. If appropriate, forwards case to Bureau Chief, and requests consultation.

.Bureau Chief
(designee)

4. Upon receipt, reviews case file and consults with Regional Supervisor:

- a. If the use of U.S. District Courts is not appropriate, notes in the case file and returns to the Regional Office for further investigation/action.
- b. If case is appropriate for certification, refers to the Administrative Assistant for preparation.

.Administrative
Assistant

5. Prepares form CS 504.9A, "Notice to Responding State of Intention to Seek Certification for Use of the U.S. District Courts." Returns case to Bureau Chief for review and approval.

.Bureau Chief

6. Reviews and signs form CS 504.9A, if appropriate. Returns to Administrative Assistant for further processing and mailing.

.Administrative
Assistant

7. Prepares two photocopies of signed Notice. Mails original to responding state. Retains one copy in administrative file. Places the second copy in the case file and returns to originating CSE regional office. Diaries for response within 30 calendar days.

8. If a response to the Notice is received, forwards a copy of the response to both the Regional Supervisor and the Bureau Chief.

.Bureau Chief
(or designee)

9. Reviews response to determine whether it is "adequate":

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- a. If the response is inadequate, notifies Administrative Assistant that certification may proceed [skip to step 10].
- b. If so, notifies Regional Supervisor that the responding state will proceed with action and that no further steps need be taken toward certification.

.Administrative
Assistant

10. If no response is received by the 30th calendar day (or if an inadequate response was received), prepares four copies of:

- the interstate referral request for enforcement
- form CS 504.9A

Obtains three certified copies of the latest support order from the clerk of court.

NOTE: If an inadequate response has been received, four copies of the response should also be prepared.

11. Completes the certification form (available as needed from the Denver Region VIII Office of Family Support). Presents to Bureau Chief for review and approval.

.Bureau Chief

12. Reviews, signs (if appropriate), and returns all material to Administrative Assistant for further processing.

.Administrative
Assistant

13. Makes four copies of the certification form. Assembles certification packets consisting of:

- Copy of the certification form
- Copy of Form CS-504.9A
- Interstate administrative or URESA referral for enforcement
- Certified copy of the support order
- A copy of any inadequate response to form CS-504.9A (if any)

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14. Mails original certification form and two certification packet to the OCSE Regional Representative. Retains one packet in the administrative file. Sends one copy of the packet to the originating CSE regional office. Diaries for 30 calendar days, and monitors for OCSE response.
15. Upon receipt of certification, or rejection notice, makes one copy for the administrative file and forwards the original to the originating Regional Office.
16. If certification has been rejected, consults with supervisor and/or CSE Staff Attorney for further action.
17. If certification has been approved, presents case file with full documentation to CSE Staff Attorney, for commencement of enforcement action in U.S. District Court.

.Caseworker/
Typist

SEE FOLLOWING PAGES FOR INSTRUCTIONS AND SAMPLE.

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STATE OF MONTANA
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT BUREAU

TO: _____

RE: _____

(Absent Parent)

(Custodian)

Your Case Number: _____

Our Case Number: _____

* * * * *

NOTICE TO RESPONDING STATE OF INTENTION TO SEEK
CERTIFICATION FOR USE OF THE U.S. DISTRICT COURTS

* * * * *

NOTICE IS HEREBY GIVEN that, pursuant to the 42 USC §660 and 45 CFR § 303.73, the State of Montana intends to seek certification of the above-referenced case to the U.S. District Court. Certification is sought for the reason that more than sixty (60) days have elapsed without the initiation of enforcement action against the absent parent who resides in your jurisdiction.

Unless an acceptable response to the request for enforcement action is received by Montana at the address below within thirty (30) days from the date of this notice, a request for certification will be made. A response deemed "unacceptable" will not preclude a request for certification.

Dated this _____ day of _____, 19____.

_____, Bureau Chief
Child Support Enforcement Bureau
Department of Revenue
P. O. 5955, Old Livestock Building
Helena, Montana 59604

Telephone: (406) 444-4614

CS-504.9A
(New 4/89)

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INSTRUCTIONS:

Responsibility Call Out Number

ACTION

FORM CS-504.9A, "Notice to Responding State of Intention to Seek Certification for Use of the U.S. District Courts"--Used to formally notify a state which has failed to respond to an interstate administrative or URESA enforcement referral.

.Hearings
Assistant

- 1 Enter the full address of the responding state.
- 2 Enter the name of the obligor.
- 3 Enter the name of the obligee.
- 4 Enter the case number of the responding state (if available).

.Bureau Chief
or Designee

- 5 Enter the IV-D case number.
- 6 Enter the current date.
- 7 Sign your name.

.Hearings
Assistant

- 8 Enter the name of the Bureau Chief or designee.

Department of Public Health and
Human Services

section:
CIVIL ENFORCEMENT: LIENS

CHILD SUPPORT ENFORCEMENT

subject:
Support Liens--Overview

SUPERSEDES: CS 507.1, Support Liens--Overview, July 13, 1994

REFERENCES: 45 CFR § 303.103
MCA § 40-5-185, 40-5-227, 40-5-248, 40-5-271
MCA § 25-13-6

INTRODUCTION: This section discusses the types and characteristics of liens available under Montana law, sets a policy for establishing liens in appropriate cases, and sets procedures for determining when lien establishment is appropriate. Following sections will discuss perfecting support liens, enforcing support liens and releasing support liens. These procedures do not apply to Lottery Liens. For specific instructions on Lottery Liens see CS 507.5.

Regulations at 45 CFR § 303.103 require that liens be imposed against real and personal property in all appropriate cases. Montana law at § 40-5-248 describes the creation of administrative support liens.

DEFINITIONS: A **lien** is a charge, security or encumbrance on property that prevents the sale or transfer of the property without the permission of the lienholder. Liens are not judgments; a judgment may give rise to a lien.

A **lienholder** is a creditor whose claim or debt is secured by a lien against a particular piece of property. Because of the lien, a lienholder has greater rights against a debtor than ordinary creditors.

Real property or realty is defined as land and things attached to the land, such as a house or timber. To be effective against realty, a notice of lien must be filed in the county or counties in which the real property is located.

Personal property or personalty is defined as everything else which can be owned and which is not real property. Different requirements for notice of lien are imposed by law, depending on the type of personal property.

Exempt property is property to which a lien cannot be attached. Montana law defines what property a debtor owns which may not be used to satisfy a judgment. This exempt property cannot be taken by writ of execution. Some examples of exempt property are: welfare benefits, professionally prescribed health aids, burial plots, the debtor's interest in a motor vehicle (up to \$1,200), the

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debtor's interest in tools of the trade (up to \$3,000). See MCA Title 25, Chapter 13, Part 6 for a complete list of exempt property.

Liens imposed by operation of law are liens which are automatically created by the following CSED actions:

- entry of a final decision in a contested case which finds the obligor to owe a sum-certain debt; or
- registration of a support order from another tribunal under MCA § 40-5-271, where that order includes a finding that the obligor owes a sum-certain amount of delinquent support.

Liens by operation of law are also automatically created in the district court by:

- accrual of unpaid support under a court-ordered support obligation or an abstracted administrative support order;
- entry of a court-ordered money judgment;
- filing of a warrant for distraint; or
- filing of a consent order or abstracted administrative order establishing an arrearage.

Consensual liens are liens which are voluntarily given to the lienholder by the debtor. A mortgage on real property is an example of a consensual lien. Other consensual liens include UCC (Uniform Commercial Code) liens on personal property or vehicle liens (including mobile homes) which may only be obtained by noting the lien on the appropriate title document and mailing it and the required fee to the Registrar of Motor Vehicles. (Consult a CSED staff attorney for updated fees and procedures.)

Consensual liens are effective enforcement tools because they can be applied to exempt property, such as an obligor's tools or homestead. Obligors may be willing to grant the CSED a voluntary lien in order to avoid the application of some other enforcement technique, such as a writ of execution, bonding or contempt proceedings. Also as part of a bonding case, the court can order the obligor to encumber property -- to grant a lien -- as security for the payment of future support (see CS 508.5, "Utilization of Bonding for Future Payments.")

A **warrant for distraint** is an order, issued by the department under seal, directed to a sheriff or other levying officer. The order commands the sheriff or levying officer to seize and sell non-exempt property

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belonging to an obligor in order to satisfy a support lien. A warrant for distraint has the same effect as a writ of execution, issued by the district court.

A **levying officer** is a registered process server who has posted a surety bond with the district court. This process enables a person who is not a law enforcement officer to serve writs and warrants for distraint for the enforcement of judgments. A levying officer may not levy on a judgment that exceeds the value of the posted bond.

POLICY: While the CSED may always rely on general judgment liens imposed by law, the CSED will take steps to impose liens on an obligor's non-exempt property as follows:

1. **Administrative support liens** are automatically imposed by operation of law against all realty and personalty belonging to an obligor whenever:

- a) the CSED enters a final decision in a contested case which includes a finding that the obligor owes a sum-certain debt; or
- b) an order which includes a finding that the obligor owes a sum-certain amount of delinquent support is registered with the CSED under MCA § 40-5-271.

Administrative support liens are in addition to any other lien created by law.

2. **General judgment liens** are automatically imposed by operation of law on all support arrears accrued under the terms of:

- a) Montana district court judgments or orders;
- b) judgments and orders of other states registered with the district courts pursuant to MCA § 40-5-185;
- c) administrative judgments and orders abstracted to district courts pursuant to MCA § 40-5-227.

3. **Consensual liens** shall be imposed in all appropriate cases on an obligor's property in accordance with law whenever a support obligor executes the necessary documents.

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4. Transcripts of docket shall be filed in all appropriate cases in accordance with law in each and every Montana county in which an obligor owns non-exempt real property, except those counties with an existing general judgment lien.

APPROPRIATE CASES

For the purposes of this section, an "appropriate case" is a case meeting all of the following characteristics:

- existence of a support order or judgment;
- an outstanding delinquency greater than \$150.00;
- the order is unenforceable by income withholding. The term "unenforceable by income withholding" is defined as a case in which the obligor either receives no income, or receives income from a source not qualifying as a "payor," or a case in which income withholding is in place, but the case record indicates that arrears will not be paid-in-full within two years;
- the obligor owns non-exempt property with a value exceeding the costs of levy and execution, and any prior, superior liens; and
- in the case of a motor vehicle (defined as any item for which the Department of Justice issues a certificate of ownership) the estimated net value of the vehicle (total value less \$1,200, for a primary vehicle) not only exceeds the above costs, but also represents a significant collection in the particular case; also, one or both of the following conditions apply: (1) there is a good likelihood the obligor will sell the vehicle while its value to the CSED still attains; or (2) the obligor has some income, so there is some possibility of obtaining support payments in response to the lien incentive.

NOTE: Estimating Value and Likelihood of Sale of Vehicle.

In estimating the value of a vehicle the caseworker may consider any of the following factors: (1) the value assigned by the industry (this is the dollar amount listed for the year and make of the vehicle in the National Automobile Dealers Association's "bluebook" or other equivalent resource), (2) the approximate value suggested by an automobile dealer or other knowledgeable

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party contacted informally, or (3) if applicable, any value the vehicle may have by collectors' standards as an "antique" or "classic" vehicle (listings are available). Factors affecting the likelihood of sale are case-specific, but **may** include whether the car is the obligor's primary means of transportation, whether a trade-in is feasible, or whether a financial emergency might force the sale of the car as a last resort.

PROCEDURE: Determination of whether CSED action is required to establish administrative support lien, or to extend existing liens.

RESPONSIBILITY

ACTION

Caseworker

1. Reviews case record to determine if it is an "appropriate case."
2. If so, reviews the case record to determine if the obligor owns any non-exempt real or personal property:
 - a) If the obligor owns non-exempt property in Montana, proceeds to step 3; or,
 - b) If the obligor owns property in Montana which is or may be claimed to be exempt, proceeds to step 5; or,
 - c) If the case record reveals no non-exempt property owned by the obligor in Montana, but reveals the existence of non-exempt real or personal property in another state or in a foreign country with which Montana has a reciprocal support enforcement agreement, initiates appropriate interstate remedy (see CS 506, "Interstate Enforcement," and CS 508.15 "Full IRS Collection Services,"; or,
 - d) If the case record reveals no non-exempt property owned by the obligor anywhere in the United States or in any foreign jurisdiction with which Montana has a reciprocal support enforcement agreement, takes steps necessary to locate assets (see CS 300.1, "Location" and sections following).

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3. Reviews the case record to determine if an old "Warrant for Distraint" has been previously filed with the district court. If a warrant has previously been filed with the district court under old CSED procedures, please consult your regional CSE attorney for further forms and procedures.
4. Reviews the case record to determine if:
 - the obligor's support arrearage has been reduced to a sum-certain debt under a final CSED decision in a contested case under Title 40, chapter 5; or
 - a foreign support order with a finding of a sum-certain delinquency has been registered with the CSED in accordance with MCA § 40-5-271.

NOTE: Federal income tax offset proceedings are not contested cases under Title 40, chapter 5. Consequently, there is no lien effect exerted by an administrative decision on a federal income tax offset proceeding.

- a) If not, proceeds to establish a sum-certain debt by serving a "Notice of Intent to Withhold Income," CS-510.3; or a "Supplemental Notice of Intent to Withhold Income," CS-510.10 or other appropriate notice under Title 40, Chapter 5 which is designed to result in a finding regarding the obligor's sum-certain arrearage debt.
 - b) If so, proceeds to CS 507.2 "Perfecting A Support Lien."
5. If the obligor owns exempt real or personal property in Montana, and the case record indicates that the obligor is likely to be cooperative, attempt to secure one or more of the following consensual liens:
 - UCC (Uniform Commercial Code) lien
 - mortgage on real property (first or subsequent)
 - lien on motor vehicle.

Consults CSE staff attorney for instructions on securing consensual liens.

Department of Public Health and
Human Services

section:
CIVIL ENFORCEMENT: LIENS

CHILD SUPPORT ENFORCEMENT

subject:
Perfecting a Support Lien

SUPERSEDES: CS 507.2, Perfecting a Support Lien, July 13, 1994

REFERENCES: MCA § 30-9-107, 30-9-401; MCA § 40-5-247

INTRODUCTION: Liens do not, of themselves, give the CSED authority to seize and sell an obligor's property. Nevertheless, liens are effective passive enforcement devices because the CSED can often insist on full or partial payment of past due support in return for permission to sell encumbered property. Some or all of the proceeds of a sale can usually be directed to the CSED as a part of the transaction. It is the sale itself which creates the need to pay the lien, as well as the funds to do so.

Before a lien is effective as an encumbrance on property, persons must know that a lien exists. A support lien is **perfected** when persons with an interest in the property encumbered have notice that a lien against the property has been created. A "Notice to Clerk of Court of Support Lien," form CS-507.2A, filed with the proper body or recording agency, perfects a support lien.

Perfecting a lien may not always be necessary in order to achieve a lien effect. It may be enough to put persons who hold property of the obligor's on notice of the lien. This notice may prompt them to notify the CSED when the obligor's property is sold and funds are available for execution. However, failing to perfect the lien will prevent the CSED from asserting any remedies which it might otherwise exercise against third parties who ignore the notice of lien.

The CSED may also serve a "Notice of Support Lien," form CS-507.2B, on any person, firm, corporation, association or political subdivision or department of the state which holds real or personal property that is due, owing or belonging to an obligor. Once notice is received, the entity holding the obligors' property may be liable for the entire amount of the support lien if it distributes or disposes of the property contrary to the notice. Personal property includes the obligor's share of an estate, workers' compensation benefits and any proceeds or potential proceeds due to an obligor from a lawsuit.

Once a support lien is perfected, it follows the encumbered property. If real property is sold or transferred without release of the lien, the CSED may recover the lien amount (up to the value of the obligor's former interest in the property) from the new owner or

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the title insurance company. Liens also follow encumbered motor vehicles, or other property for which the Department of Justice issues a certificate of ownership. If an obligor sells other kinds of encumbered personal property, a good faith buyer of the property who has no knowledge of the support lien takes the property free of the lien.

PRIORITY OF SUPPORT LIENS

From the date it is perfected, a support lien has priority over other encumbrances **except**:

- any other liens or security interests which were perfected before the support lien;
- a mortgage, used by the obligor to purchase the real property encumbered by the mortgage;
- any perfected **purchase money security interest**. A purchase money security interest may arise if an obligor purchases a piece of personal property, and pledges the item purchased as collateral for the loan.

POLICY:

PERFECTING A SUPPORT LIEN AGAINST REAL PROPERTY

To perfect a support lien against an obligor's real property, file a "Notice to Clerk of Court of Support Lien" (CS-507.2A) with the Clerk of District Court in each county where an obligor owns an interest in real property. In addition, notices may be filed with the District Court in any county in which the obligor may acquire property in the future.

PERFECTING A SUPPORT LIEN AGAINST MOTOR VEHICLES

To perfect a support lien against an obligor's motor vehicle (where "motor vehicle" or "vehicle" is defined as any item for which the Department of Justice issues a certificate of ownership), submit a "Notice of Support Lien" (CS-507.2B) to the CSED's central office in Helena, to be filed with the Department of Justice's Motor Vehicle Division (MVD) in Deer Lodge. The CSED will file vehicle liens in monthly batches; the MVD will perfect the liens by entering them in the state data base of motor vehicle liens, and collecting the fees for the liens from the trust fund established by the CSED for that purpose. Regardless of the date listed on an

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Perfecting a Support Lien

individual Notice of Support Lien, the lien is not perfected until the MVD processes the lien and collects the fee.

A person calling the MVD during regular business hours with the title number or serial number of a vehicle can obtain current information about whether a child support lien has been asserted against that vehicle. Also, the MVD regularly issues a list of vehicles with existing child support liens. The CSED mails this list to interested parties (automobile dealers, vehicle financing and lending agencies) each time it is updated.

If a purchaser (dealer or individual) or lender discovers a child support lien on a vehicle, the purchaser or lender may decide not to proceed with an intended transaction involving the vehicle. Or, the parties may seek to obtain release of the lien as part of the purchase transaction. A lien that escapes the notice of the purchaser or lender despite efforts to discover it (possibly because of the timing of the transaction) remains in effect as an encumbrance on the vehicle. See section CS 507.4, Releasing a Support Lien, for remedies available to affected parties.

PERFECTING A SUPPORT LIEN AGAINST OTHER PERSONAL PROPERTY

Filing a support lien with the secretary of state's office perfects a support lien against non-licensed, non-titled personal property. Generally, this type of lien would be most useful against an obligor who owns non-exempt property, such as farm machinery or logging equipment. Sometimes, a determination of non-exempt status of such property will require an examination of recent case law decisions. Please consult your regional CSED attorney with questions regarding liens against personal property.

PROCEDURES: The following procedures are used to perfect administrative support liens asserted by the CSED, or to perfect liens registered with the CSED lien registry pursuant to MCA 40-5-263(7).

RESPONSIBILITY	ACTION
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Caseworker	1. REAL PROPERTY: Upon a determination that the CSED may exert a support lien against an obligor's real
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section:
CIVIL ENFORCEMENT: LIENS

subject:
Perfecting a Support Lien

property,

- a) completes form CS-507.2A, "Notice to Clerk of Court of Support Lien." Makes appropriate entry to SEARCHS.
- b) Makes at least four copies of original. Retains one copy for file. Enters list of counties where filed on SEARCHS LIN screen. Mails one copy to obligor, one copy to obligee. Forwards one copy to the office of the ALJ for the support lien registry.
- c) For each Montana county in which the obligor owns non-exempt real property, prepares form CS-503.7A "Praecipe (Clerk of Court)." Mails duplicate originals of notice, along with praecipe, to the applicable district court(s).

2. MOTOR VEHICLES or other items for which the Department of Justice issues a certificate of ownership: Upon a determination that the CSED may exert a support lien against an obligor's motor vehicle(s),

- a) completes form CS-507.2B, "Notice of Support Lien". Makes appropriate entry to SEARCHS. For interstate liens registered under MCA 40-5-263 where the underlying order does not establish a sum-certain amount of delinquent support, determines lien amount using updated debt computation provided by initiating state, and subsequent payments reported to or collected by the CSED.
- b) Makes four copies of original. Retains one copy for file. Mails one copy to obligor, one copy to obligee. Forwards one copy to the office of the ALJ for the support lien registry. Mails original to CSED Administrative Support Unit in Helena.

CSED Administrative
Support Unit

- c) Shortly before the third Wednesday of each month assembles all forms CS-507.2B received from regions since last batch submitted, and mails to Department of Justice, Motor Vehicle Division (MVD) in Deer Lodge. Monitors for receipt of updated list of perfected liens

section:
CIVIL ENFORCEMENT: LIENS

subject:
Perfecting a Support Lien

from MVD; immediately upon receipt of list mails copies to Montana automobile dealers and lending institutions.

- Caseworker 3. PERSONAL PROPERTY: Upon a determination that the CSED may exert a support lien against an obligor's personal property, other than motor vehicles,
- a) completes form CS-507.2B, "Notice of Support Lien." Makes appropriate entry to SEARCHS. For interstate liens registered under MCA 40-5-263 where the underlying order does not establish a sum-certain amount of delinquent support, determines lien amount using updated debt computation provided by initiating state, and subsequent payments reported to or collected by the CSED.
 - b) Makes four copies of original. Retains one copy for file. Mails one copy to obligor, one copy to obligee. Forwards one copy to the office of the ALJ for the support lien registry.
 - c) Consults with CSED staff attorney for appropriate place for filing of notice, in accordance with MCA § 30-9-401.
 - d) Mails original to appropriate filing place, along with any required fee.

Department of Social and
Rehabilitation Services**section:**
Civil Enforcement: Liens**subject:**
Enforcing a Support Lien**CHILD SUPPORT ENFORCEMENT**REFERENCES: MCA § 25-13-801 et seq.
MCA § 40-5-247**INTRODUCTION:** Support liens are enforceable by service of a warrant for distraint.

The notice of support lien commands a third party in possession or control of an obligor's property to notify the CSED regarding the existence or pending sale of the property. Upon notification, the CSED will prepare and issue a "Warrant for Distraint," form CS-503.7B to a sheriff or levying officer. If necessary, the sheriff or levying officer will conduct a sale of the seized property.

An obligor or other party having an interest in the property may prevent a sale of the seized property at any time prior to the sale. To prevent a scheduled sale, the obligor or other party must pay the CSED the full amount of the support lien, plus any costs incurred by the sheriff or levying officer in serving the warrant.

Proceeds of the sale are used to pay for the costs incurred by the sheriff or levying officer, any superior liens, and then the support lien or other money obligation. Remaining funds must be used to satisfy inferior liens, and any excess must be returned to the obligor. Consequently, care must be taken in determining which assets should be seized and sold. The anticipated sale price should be great enough to cover the costs involved in the seizure, to pay off any existing superior liens, and then to pay the support lien in whole or in substantial part.

REDEMPTION OF REAL PROPERTY AFTER FORCED SALE

Montana law at MCA § 25-13-801 et seq. extends special protection to the owner of real property which has been sold to satisfy a judgment or support lien. An obligor or another party with an interest in the property may **redeem** the parcel by buying it from the purchaser. Redemption must take place within 240 days of the date of the sheriff or levying officer's sale.

Redemptions may affect CSED operations when real

section:

Civil Enforcement: Liens

subject:

Enforcing a Support Lien

property is sold at a sheriff's sale to satisfy a lien.

Redemption means to repurchase or buy back. A judgment debtor may redeem real property which was sold by the sheriff or levying officer in order to satisfy a judgment debt or support lien.

Example: An obligor owes a judgment to CSED for \$10,000. The CSED owns the only lien on the obligor's home and forces execution and sale of it. Third party buys the home and CSED gets paid from the proceeds. Then, the obligor may "redeem" the home within 240 days by paying the redemption amount (which is calculated according to statute). If obligor redeems the home, the obligor now owns it, and the third party gets his or her investment plus a statutory fee from the obligor.

If there is more than one lien on a piece of property, the sheriff's sale and redemption procedure is more complex. If the child support lien is not a first priority lien, the sheriff's sale may not yield enough money to pay the first liens and also the child support liens. However, if the obligor redeems the property after the sheriff's sale, the CSED may then get the value of its lien.

The number of persons who may redeem real property are limited. These persons are called "redemptioners". The following people may be redemptioners under MCA section 25-13-801:

1. the obligor;
2. the obligor's spouse;
3. the obligor's successor in interest (may be a shareholder of a corporation); or
4. a judgment creditor;

The CSED does not generally take advantage of its role as a redemptioner, because the CSED cannot benefit from the ownership of property. Therefore, this procedure section does not explain the method for redeeming property.

NOTE: If property is redeemed, the CSED probably will receive no notice of the redemption unless the redemption satisfies an existing child support lien.

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Civil Enforcement: Liens

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Enforcing a Support Lien

If it does satisfy an existing child support lien, the CSED will know that a redemption has occurred because the CSED will receive a check for the amount of the lien. If you believe that a redemption has occurred, consult your CSE staff attorney.

PROCEDURE: To enforce administrative support liens asserted by the CSED.

Responsibility	ACTION
.Caseworker	1. Upon a determination that a third party has in its possession property due, owing or belonging to an obligor, prepares form CS-507.3A, "Warrant for Distrainment." Makes one copy for file, one copy for the ALJ, and one copy for each party to be served warrant. 2. Prepares form CS-401.3C, "Praecipe to the Sheriff", checking either "Sheriff" or "Private Process Server" whichever is appropriate. 3. Forwards original warrant and copies to the office of the administrative law judge.
.ALJ/Hearings	4. Signs and seals warrant for distraint. Conforms service copies of warrant. Forwards original warrant, plus service copies, to sheriff or levying officer. Retains copy for ALJ records. 5. Notifies caseworker of the date warrant package forwarded to sheriff or levying officer.
.Caseworker	6. Calendars for sheriff's return, 93 calendar days after the date warrant package was forwarded for service. 7. Upon return of service, directs distribution of any proceeds by entry of a MPI onto SEARCHS. Prepares copy of sheriff's return for file. 8. Forwards original warrant, and return of service to the office of the ALJ.

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

In Re the Support Obligation of:

13- (1)
Obligor

Case No. 2- (2)

WARRANT FOR DISTRAINT

To the Sheriff of 100- (3) County:

The Obligor named above is liable to the Department of Social and Rehabilitation Services (Department) for a support obligation(s), interest, fees, and penalties for the period(s) and in the amount(s) shown below, to wit:

<u>PERIOD</u>	<u>SUPPORT DUE</u>
23-	24-
25-	26-
27-	28-
29-	30-
31-	32-
TOTAL AMOUNT OF WARRANT:	
	\$33- (5)

The amount of the warrant reflects only that amount claimed by the Department during the period specified. This warrant is issued pursuant to Montana Code Annotated § 40-5-247.

Now, you, the Sheriff named above, are hereby required and directed to levy upon and sell, as necessary, any of the non-exempt property of the Obligor to satisfy the support lien upon which this warrant is based, and any of your costs associated herewith. The Obligor's property, more particularly described, is:

(6) 105- 106- 107- 108- 109- 110- 111- 112-

Proceed substantially as provided in MCA Title 25, Chapter 13 to the extent that those provisions do not conflict with MCA § 40-5-247. Your return is required, along with any funds collected, within 90 days of the date you received the warrant.

WITNESS: My hand and the seal of the Department this (7) day of (8),
19 (9).

(SEAL)

STATE OF MONTANA, Department of
Social and Rehabilitation Services

(10) 18-, Director

By: (11)
Child Support Enforcement Division

July 13, 1994

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CS-507.3A
(Rev. 7/94)

section:

Civil Enforcement: Liens

subject:

Enforcing a Support Lien

Responsibility	Call-Out Number	ACTION
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Form CS-507.3A, "Warrant for Distrainment"

Caseworker	1	Enter name of Obligor on DFE.
	2	Enter case number on DFE.
	3	Enter appropriate county on DFE.
	4	Enter period and support due on DFE.
	5	Enter total amount of warrant on DFE.
	6	Enter property description(s) on DFE.
	7	Enter current day.
	8	Enter name of current month.
	9	Enter the current year.
	10	System will enter Director's name.
Administrative Law Judge	11	Sign your name.

NOTE: Sheriff's Praecipe is always attached to warrant. The stuffer will be generated automatically on the back of the praecipe if a Montana sheriff has been selected.

Department of Public Health and
Human Services

section:
CIVIL ENFORCEMENT: LIENS

CHILD SUPPORT ENFORCEMENT

subject:
Releasing a Support Lien

SUPERSEDES: CS 507.4, Releasing a Support Lien, March 25, 1996

REFERENCES: 45 CFR § 303.103; MCA §§ 40-5-185, 40-5-227, 40-5-248, 40-5-271, 25-13-6

INTRODUCTION: Whenever enforcement of a support lien results in the full collection of the amount due under the lien, the lien must be released. By releasing the lien, the CSED terminates the encumbrance on the property, allowing it to pass freely. With real property, a lien release clears the title, and allows a title insurance company to issue a warranty deed. Failure of a creditor to file satisfaction of judgment, or to release liens placed on real property may result in liability for slander of title.

Real property liens may be fully released, which releases all of an obligor's real property in a county, or may be partially released, which releases a specific parcel of real property. To do a partial release, you **must** have the legal description of the particular parcel.

Generally, personal property liens are item-specific. Thus, when one item is released, it is fully released. There may be times when only a portion of a personal property item should be released. Please consult your regional CSED staff attorney for appropriate forms.

POLICY: Required Release. The CSED **must** release a support lien when enforcement of the lien results in the full collection of the amount due under the lien, or when the case is being closed.

Also, upon request by an appropriate party, the CSED must partially release a support lien when the lien includes "excess property;" excess property is property that

- is separable from the rest of the property subject to the lien, and
- is no longer needed to enforce the full amount owed by the obligor. (**CAUTION: This condition applies only when the value of the remaining, unreleased property is sufficient to cover the value of the original lien, less any collections, plus any additional support debt accrued since the lien was perfected.**)

Excess property may come about when collection in the case decreases the amount the obligor owes, or when the subject property becomes divisible--or a dollar value is

section:
CIVIL ENFORCEMENT: LIENS

subject:
Releasing a Support Lien

identified--after the lien is perfected.

NOTE: Unrequested Partial Release. Where there is no request to partially release a lien, the CSED generally retains its lien against any excess property identified, to cover any future support debt accrued before the lien is finally enforced.

Discretionary Release. The CSED **may** release a support lien in an open case before it collects the full amount due under the lien, but will do so **only** if one of the following conditions applies:

- (1) The CSED determines the lien is unenforceable.

NOTE: Repossessed Vehicles. In the case of a vehicle that is repossessed by a lender holding a superior lien, the CSED will release its lien if it does not expect the sale of the vehicle to produce sufficient funds to cover the superior lien(s) plus payment toward the support lien. This information can be requested from the superior lienholder.

- (2) There is good reason to believe release of the lien will facilitate collection of the support arrearage.

NOTE: Subordination of Lien. Instead of releasing a lien, the CSED may agree to **subordinate** its lien on a property (that is, to accept a lower priority as a lienholder) if this action will facilitate collection of the support arrearage. (For example, in a situation where an obligor arranges refinancing to avoid foreclosure, and the new financing company demands first place as lienholder in order to agree to the arrangement, the CSED may agree to subordinate its interest to keep the property from being lost to the CSED altogether.) Consult the CSED staff attorney for preparation or review of any subordination agreement.

- (3) The CSED agrees to give up some or all of its claim on the property to allow payment to other lienholders in the action (for example, in an insurance settlement the CSED may agree to release amounts for medical and attorney fees). A release in this situation must include special terms clearly retaining any portion of the lien not

section:
CIVIL ENFORCEMENT: LIENS

subject:
Releasing a Support Lien

released in the agreement.

(4) In the case of a motor vehicle (defined as any item for which the Department of Justice issues a certificate of ownership), the CSED receives either of the following:

- (a) A request for release of lien from an automobile dealer (or from the financing agency having an interest in the status of the vehicle title), in which the requestor proves the dealer purchased the vehicle from the obligor in good faith. Good-faith purchase is presumed if, at the time of the transaction, the dealer consulted the MVD's latest list of support liens and found there to be no support liens filed against the vehicle. The request for release must be submitted on the CSED's form or its equivalent, and must contain a verifiable statement of good-faith purchase.
- (b) Payment of an amount pre-approved by the CSED for release of the lien, where the payor is the lender for the purchase of the vehicle. In this situation the seller (obligor) has agreed to accept the agreed purchase price less an amount to be paid directly to the CSED, in return for the ability to sell the vehicle. The lender's request for release of lien contains the particulars of the agreement and the date of the distribution to the CSED. The request must be submitted on the CSED's form or its equivalent, and must contain the signed agreements of the CSED investigator, the seller, and the lender.

The CSED will grant all requests to release vehicle liens where the conditions in (a) or (b) above apply.

Any decision to issue a discretionary release in (1) through (4) above requires a thorough examination of the individual facts and circumstances of the case.

PROCEDURE: To partially or fully release liens asserted against property of an obligor.

section:
CIVIL ENFORCEMENT: LIENS

subject:
Releasing a Support Lien

RESPONSIBILITY	ACTION
.Caseworker	1. REAL PROPERTY: FULL RELEASE OF LIEN -- Upon identifying a case where a support lien is fully satisfied, or is no longer appropriate (see POLICY), takes action as follows: a) Completes form CS-507.4A, "Full Release of Support Lien", but does not sign. Doc Gen will automatically generate the Clerk of Court praecipe(s) (CS-503.7A) for filing the executed release in the existing cause number in each Montana county in which a lien was perfected against an obligor's real property. b) Submits to CSED staff attorney for approval. c) Upon approval by staff attorney forwards to the office of the ALJ for execution. Makes appropriate entry to SEARCHS.
.Administrative Law Judge	d) Reviews and signs "Full Release of Support Lien." Forwards to hearing assistant.
.Hearings Assistant	e) Makes four copies of the original. Retains one copy for the support lien registry. Mails one copy to the obligor, one copy to the obligee, and one copy to caseworker. In appropriate cases it may also be necessary to send a copy to the new owner of the property. f) Mails original "Full Release of Support Lien," and the Clerk of Court praecipe to district court(s). g) Makes appropriate entry on the SEARCHS LIN screen.
	2. REAL PROPERTY: PARTIAL RELEASE OF LIEN -- Upon identifying a case where a partial release of support lien applies (see POLICY)), takes action as follows:
.Caseworker	a) Completes form CS-507.4B, "Partial Release of Support Lien", but does not sign. Doc Gen automatically generates the Clerk of Court praecipe (CS-503.7A) for filing the executed release in the existing cause number in the

section:
CIVIL ENFORCEMENT: LIENS

subject:
Releasing a Support Lien

Montana county in which a lien was perfected against identified real property belonging to an obligor's real property.

- b) Submits to CSED staff attorney for approval.
 - c) Upon approval by staff attorney forwards to the office of the ALJ for execution. Makes appropriate entry to SEARCHS.
 - .Administrative Law Judge d) Reviews and signs "Partial Release of Support Lien." Forwards to hearing assistant.
 - .Hearings Assistant e) Makes four copies of the original. Retains one copy for the support lien registry. Mails one copy to the obligor, one copy to the obligee, and one copy to caseworker. In appropriate cases it may also be necessary to send a copy to the new owner of the property.
 - f) Mails original "Partial Release of Support Lien", and the praecipe to district court.
 - g) Makes appropriate entry on the SEARCHS LIN screen.
3. MOTOR VEHICLES, OR OTHER ITEMS FOR WHICH THE DEPARTMENT OF JUSTICE ISSUES A CERTIFICATE OF OWNERSHIP
- CSED Central Office a) Distributes to appropriate parties, with instructions for use, samples of form CS-507.4D, Agreement to Distribution of Loan Proceeds and Release of Lien, and form CS-507.4E, Statement of Good-Faith Purchase and Request for Release of Lien.
 - Customer Service Unit b) Receives incoming calls relating to specific purchase of "liened" vehicle and takes action as follows:
 - For transactions in progress at time of call, immediately transfers caller to region for response from caseworker.
 - For transactions not in progress at time of call (ones that have already occurred, or that are intended but not in progress at that moment), takes message for

section:
CIVIL ENFORCEMENT: LIENS

subject:
Releasing a Support Lien

caseworker according to usual procedures.

Caseworker

- c) Upon identifying a case where a support lien is fully satisfied or is no longer appropriate (see POLICY), takes action beginning in step 3e below. Upon identifying a case where a release **may** apply based on a good-faith purchase, or on receipt of an agreed payment from a lender for a vehicle purchase, takes action beginning in step 3d below.
- d) Upon being contacted by affected party, explains procedures for requesting release of lien and takes action in i) or ii) below as applicable.
 - i) Before purchase. If vehicle purchase involving lending institution is intended but has not yet occurred, takes necessary information on lender, purchaser, and agreed purchase price from contacting party (must be lender except in unusual situations). Determines payment amount required to release lien. (At discretion of caseworker, amount may be less than full lien amount if reduction will be beneficial to disposition of case.)

Completes form CS-507.4D, "Agreement to Distribution of Loan Proceeds and Release of Lien," except for lender's distribution date. Marks lines still to be completed (seller's signature, distribution date, lender's signature), signs form, enters SEARCHS case note, and mails original to lender. Enters appropriate SEARCHS case note and sets tickler for return of form.

Upon return of properly completed form from lender, checks for receipt of indicated payment; if payment received, proceeds to step 3e to release lien.

NOTE: "Before-Purchase" Form Appropriate for Lenders Only. The agreement form is designed for use when there is a direct cash loan for the purchase of the

section:
CIVIL ENFORCEMENT: LIENS

subject:
Releasing a Support Lien

obligor's vehicle. If a lender is not directly involved and the contacting party is a dealer, an individual purchaser, or the obligor, the obligor/seller must contact the CSED directly to discuss any release of the lien prior to sale.

- ii) After Purchase. If vehicle purchase has already occurred, obtains necessary information from party requesting release (requestor must be either automobile dealer or financing agency--if purchaser is individual, refers matter to CSED staff attorney). Prepares form CS-507.4E, "Statement of Good-Faith Purchase and Request for Release of Lien," and mails to requestor for completion. Enters appropriate SEARCHS case note and sets tickler for return of form.

Expedites following actions to comply with four-day turnaround (see step 3e) for release requests:

Upon receipt of completed form from automobile dealer (or from financing agency if that agency now has interest in status of title), reviews form for satisfaction of good-faith purchase requirement, and verifies by checking applicable MVD list. Upon verification, submits to team supervisor for approval; upon approval enters SEARCHS case note and proceeds to step 3e to release lien.

If investigation shows dealer should have been able to discover lien from MVD list, submits request to team supervisor with recommendation to deny. Upon approval to deny, enters SEARCHS case note and submits to CSED staff attorney for final approval. Upon final approval, and within four days after receiving request for release, works with attorney to send letter to requestor explaining reason for denial; enters SEARCHS case note. Takes no further action unless new information

section:
CIVIL ENFORCEMENT: LIENS

subject:
Releasing a Support Lien

received.

- e) Within four working days of receiving sufficient payment, or of receiving form in step 4d(ii) above, completes form CS-507.4C "Release of Support Lien," and submits to CSED staff attorney for expedited approval.
 - f) Immediately upon approval by staff attorney, proceeds in this step and in step 3g. Makes four copies of original. Retains one copy of original for file. Mails one copy to the obligor, one copy to the obligee, and one copy to the office of the ALJ for the support lien registry. Makes appropriate entry to SEARCHS. In appropriate cases it may also be necessary to send a copy to the new owner or other interested parties.
 - g) Mails original to Department of Justice, Motor Vehicles Division in Deer Lodge, Montana.
 - h) Makes appropriate entry on the SEARCHS LIN screen.
4. PERSONAL PROPERTY -- Upon identifying a case where a support lien is fully satisfied or is no longer appropriate, or where a partial release of the lien applies (see POLICY), takes action as follows:
- a) Completes form CS-507.4C "Release of Support Lien," modified as necessary if for partial release.
 - b) Submits to CSED staff attorney for approval.
 - c) Upon approval by staff attorney, makes four copies of original. Retains one copy for file. Mails one copy to obligor, one copy to obligee, and one copy to the office of the ALJ for the support lien registry. Makes appropriate entry to SEARCHS. In appropriate cases, it may also be necessary to send a copy to any new owner of the property, or to any third party in possession of the property who previously received a copy of the Notice of Lien.

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

**AGREEMENT TO DISTRIBUTION OF LOAN PROCEEDS
AND RELEASE OF LIEN**

TO THE LENDER: The assurance contained in this form remains in effect for 30 days from the date in section IV. To obtain release of the lien, (1) submit this **completed** form and a copy of the vehicle title to the address listed above, and (2) submit payment of the loan distribution as directed in section V.

I. TRANSACTORS' INFORMATION

LENDER

Agency Name: _____

Address: _____

Contact Person: _____

Telephone: _____

VEHICLE SELLER (OBLIGOR)

Name: _____

Soc. Sec. Number: _____

CSED Case No.: _____

VEHICLE PURCHASER

Name: _____

II. VEHICLE DESCRIPTION

Vehicle Year: _____

Model: _____

Make: _____

Title Number: _____

III. SELLER'S AGREEMENT

There is a support lien filed against the vehicle described above. To expedite the sale of the vehicle the seller named above agrees to the following arrangement for release of the lien:

1. The purchaser named above seeks a loan from the lender named above in the amount of \$_____ for the purchase of the vehicle.
2. On approval of the loan the lender will distribute the amount in item 1 as follows:
 - a. \$_____ to the Child Support Enforcement Division to obtain release of the support lien.
 - b. \$_____ directly to the seller.

III. SELLER'S AGREEMENT (continued)

3. On receipt of the amount in 2b above the seller will have received payment in full for the vehicle, and will have no further claim against the purchaser for any additional amount.

Date

Signature of Seller

IV. CSED AGREEMENT

On receipt of the amount in section III item 2a from the lender within 30 days of the date below, the Child Support Enforcement Division agrees to release the support lien on the vehicle described in section II.

Date

Investigator, Child Support Enforcement Division

V. INSTRUCTIONS FOR DISTRIBUTION; REQUEST FOR RELEASE OF LIEN

1. The lender requests release of the support lien. The lender distributed the amount in section III item 2a on _____ (date) according to the payment instructions given below.

Date

Signature of Lender (Contact Person from Section I)

2. Payment Instructions:

Mail payment to Child Support Enforcement Division, P.O. Box 5955, Helena, MT 59604. **Include seller's name on check.** The lien cannot be released until the payment is credited to the proper account.

VI. VEHICLE TITLE

Please attach copy of vehicle title carrying support lien.

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

**STATEMENT OF GOOD-FAITH PURCHASE AND
REQUEST FOR RELEASE OF LIEN**

TO THE REQUESTOR: To request release of a lien discovered after purchase of a vehicle the automobile dealer purchasing the vehicle must complete this form and return it with a copy of the vehicle title to the address listed above. A financing agency may submit this form in place of the dealer if the financing agency claims a financial interest in the status of the vehicle title.

I. VEHICLE DESCRIPTION

Vehicle Year: _____ Make: _____
Model: _____ Title Number: _____

II. SELLER AND PURCHASER INFORMATION

Seller: _____ Soc. Sec. Number: _____
CSED Case Number: _____

Automobile Dealer (Purchaser): _____
Address: _____

Telephone: _____

III. STATEMENT AND REQUEST FOR RELEASE OF LIEN

On _____ (date of purchase), in connection with the purchase of the vehicle described above, the automobile dealer listed above did consult the most current listing of support liens published by the Montana Motor Vehicles Division, and did confirm by that listing that no support liens were filed against the vehicle; the list was dated _____.

Because the dealer purchased the vehicle in good faith, the dealer (or financing agency) requests full release of the support lien shown on the attached title. In

III. STATEMENT AND REQUEST FOR RELEASE OF LIEN (continued)

exchange for full release of the support lien the dealer (or financing agency) assigns to the Child Support Enforcement Division any cause of action it may have against the seller of the vehicle for damages relating to the support lien.

I, the undersigned, certify that I have knowledge of the steps taken by the purchaser at the time of the transaction to discover any liens on the vehicle, and that the information contained in sections I, II, and III of this form is correct. I am an authorized representative of (check one only:)

- ☐ the automobile dealer that purchased the vehicle.
- ☐ the financing agency claiming an interest in the status of the vehicle title (if checked, please give name, address, and telephone of financing agency):

Signature of Requestor and Date

Typed or Printed Name of Requestor

IV. VEHICLE TITLE

Please attach copy of vehicle title carrying support lien.

Department of Social and
Rehabilitation Services

section:
Civil Enforcement: Liens

CHILD SUPPORT ENFORCEMENT

subject:
Lottery Liens

INTRODUCTION:

In 1993, the Legislature created a process to allow the CSED to exert a lien over a child support debtor's lottery winnings. This lien is different from the child support lien discussed at CS 507.1, "Support Liens." The statutory citation for lottery liens is MCA § 23-7-312.

Unlike other child support liens, the lottery lien does not require an adjudicated or sum certain child support debt. Also, the debt owed need not be "child support." For example, a repayment debt owed by an obligee may possibly be collected by lottery lien enforcement. For the purposes of this procedure, an "adjudicated" debt means a debt that has been reduced to a sum certain amount by a judicial or administrative order.

The following procedures apply only to lottery winnings paid out by the Lottery office. In the majority of cases, lottery winners receive their winnings by state warrant, processed through the State Auditor's office. If a lottery winner is also a child support debtor, the state debt offset will be made automatically, and, if the debt is non-adjudicated, the debtor may be entitled to notice and hearing under Title 17, chapter 4, part 1. See CS Manual 508.1, "Montana Income Tax Offset."

Many of the "big" winners present themselves directly to the Lottery office, thus by-passing the possibility of a state debt intercept. To address that situation, the CSED supplies a list of the names and social security numbers of persons owing a debt to the CSED, or persons owing a debt which is being collected by the CSED, to the Lottery. Whenever a lottery winner comes into the Lottery office presenting a winning ticket of \$600 or greater, lottery personnel check to see if the winner is on the child support list.

NOTE: A lottery winner who matches with the child support list is not necessarily a child support obligor. Any person who owes a debt to

section:
Civil Enforcement: Liens

subject:
Lottery Liens

the CSED, or owes a debt which the CSED is collecting may have lottery winnings offset.

If a lottery winner with a winning ticket in excess of \$600 matches with the child support list, a lien against those winnings is created. The Lottery may not pay those winnings unless the CSED releases the lien, or fails to garnish the winnings within 30 days.

Perfection of Lottery Lien: To perfect a lien against a debtor's lottery winnings, the CSED must provide the Lottery office with form CS 507.5B "Notice of Lien and Opportunity for Review." The Notice must be faxed to the Lottery office within one hour from the time the Lottery notifies CSED that a match has occurred.

Enforcement of Lottery Lien: A lottery lien, if based on an adjudicated debt, may be enforced like other child support liens, with references to "obligor" changed to "debtor," as necessary. A "Warrant for Dstraint," CS 503.7B directing the Sheriff to seize the lottery winnings should be prepared once the "Notice of Lien" has been provided to the Lottery. Procedures for enforcing a lien through warrant for dstraint are found at CS 507.3, "Enforcing a Support Lien."

If the debt is non-adjudicated, but is based on a district court judgment, enforcement occurs by a "Writ of Execution," CS 503.8A. If a non-adjudicated debt is not based on a district court judgment, it is not reachable by the CSED when payment is requested through the Lottery office.

NOTE: FOREIGN COURT ORDERS -- Where the debt is based on a court order issued by another jurisdiction, it will be necessary to register the order with the CSED's support order registry, to immediately abstract the registered order in a local district court, and then have the local court issue a writ of execution. IN EMERGENCY SITUATIONS, this can be accomplished in a matter of hours. Please consult CS Manual 500.2, "Registration of Support Orders," your

section:

Civil Enforcement: Liens

subject:

Lottery Liens

regional staff attorney and personnel in the Office of the Administrative Law Judge.

If an obligor has more than one case, separate lien notices should be prepared for each case.

PROCEDURE:

To establish and enforce liens for child support debt against lottery winnings greater than \$600.00 where those winnings are paid at the lottery office.

Responsibility**ACTION**

./Caseworker

1. Upon receiving notice that a CSED debtor is waiting at the Lottery office to collect winnings, checks debt balance. Determines whether debt is adjudicated or unadjudicated, and whether based on a district court judgment:
2. If there is unadjudicated debt owed to or collected by the CSED, based on a district court judgment, prepares Form CS 507.5A, "Notice of Lien Against Lottery Winnings." Faxes completed form to the Lottery Office.
NOTE: This step must be completed within one hour after notification by the Lottery.
 - a. Makes two copies of Notice. Retains one copy for file, mails one to debtor. Mails original to Lottery.
 - b. Prepares writ of execution package for service by the Lewis & Clark County sheriff on the Lottery. Please consult your regional staff attorney.
3. If there is unadjudicated debt owed to or collected by the CSED which is not based on a district court judgment, prepares CS Form 507.5C, "Notice of Release of Lien." Faxes completed form to the Lottery Office.
NOTE: This step must be completed within one hour after notification by the Lottery.
 - a. Makes two copies of Notice. Retains one copy for file, mails one to

section:

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Lottery Liens

debtor. Mails original to Lottery.

NOTE: The caseworker may wish to contact the debtor to work out a debt repayment, in light of the windfall to the debtor.

4. If there is adjudicated debt owed to or collected by the CSED, whether based on a district court judgment or not, prepares Form CS 507.5B, "Notice of Lien Against Lottery Winnings and Opportunity for Review." Faxes completed form to the Lottery Office. **NOTE: This step must be completed within one hour after notification by the Lottery.**
 - a. Makes two copies of Notice. Mails one copy to debtor. Retains one copy for file. Mails original to Lottery. Calendars for 13 days.
 - b. Prepares CS Form 503.7B, "Warrant for Distrainment." If necessary, change references to "obligor" to "debtor." Follows procedures at CS 507.3 for enforcing lien through warrant for distraint. **NOTE:** The sheriff can hold proceeds from a warrant for 90 days from the date of receipt of the warrant.
 - c. If a Request is timely recieved, completes top portion of CS Form 507.5D, "Notice Concerning Administrative Review," checking box 1 granting review. Mails original to debtor, retaining copy for file. Forwards to Regional Manager. Proceed to Step 6.
 - d. If a Request is received, but it is not timely, completes CS Form 507.5D, "Notice Concerning Administrative Review," checking box 2. Mails original to debtor, retaining copy for file.
5. If there is no debt owed to or collected by

section:
Civil Enforcement: Liens

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Lottery Liens

the CSED, prepares CS Form 507.5C, "Notice of Release of Lien." Faxes completed form to the Lottery Office. **NOTE: This step must be completed within one hour after notification by the Lottery.**

a. Makes two copies of Notice. Retains one copy for file, mails one to debtor. Mails original to Lottery.

.Regional Manager
/Designee

6. Schedules review, and completes and mails "Notice of Administrative Review" to debtor.

NOTE: Postponements -- If the debtor can show good cause for postponement of the review (e.g., that receipts for payment cannot be gathered in time), it may be rescheduled for a later date. The debtor's request for postponement must be in writing.

7. Conducts review with debtor or debtor's representative or both.

NOTE: Because an administrative review is only available for a previously adjudicated debt, the scope of inquiry is limited. The underlying adjudication, if based on appropriate jurisdiction, is not subject to attack. The purpose of the review is to insure that payments on the debt, subsequent to its entry, have been properly credited against the debt.

a. Presents exhibits and other case documentation for examination, and explains the CSED's position;

b. Accepts arguments and evidence from the debtor;

c. Advises the debtor that a written decision will be issued in five days.

8. Within three days, evaluates the case and the information presented during the review. Prepares written decision in

section:

Civil Enforcement: Liens

subject:

Lottery Liens

letter format to the debtor, advising:

- a. Whether or not the lottery winnings will be retained by the CSED;
 - b. Explain how the decision was reached;
 - c. Explain how the debtor's information or arguments affected the decision.
9. Makes one copy for file, mails original to debtor. Makes any necessary changes to SEARCHS to reflect decision.

BEFORE THE STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

IN RE THE SUPPORT OBLIGATION OF:

Case No: _____

Custodian: _____

Debtor/Obligor.

Child(ren): _____

SSN: _____

NOTICE OF LIEN AGAINST LOTTERY WINNINGS

The CHILD SUPPORT ENFORCEMENT DIVISION ("CSED") claims a lien on your lottery winnings for a debt owed to the CSED, or collected by the CSED. This lien is authorized by Montana Code Annotated § 23-7-312. The CSED claims a lien in the amount of \$_____.

If you believe the balance indicated above is incorrect, please be advised that the information provided to the Montana Lottery was generated at the beginning of the month. As a result, additional payments or additional debt during the month may not be reflected in those figures. The CSED will not keep more than the amount of the lien claimed above.

The CSED will enforce the lien by writ of execution issued by the district court.

If you have questions, contact the CSED office at the address or telephone number listed above. **PLEASE DO NOT CONTACT LOTTERY OFFICES. THE LOTTERY HAS NO AUTHORITY TO RELEASE THE LIEN.**

DATED this _____ day of _____, 19 _____.

Child Support Enforcement Division

CS-507.5A
(New 5/94)

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

IN RE THE SUPPORT OBLIGATION OF:

Obligor

Case Number: _____
Custodian: _____
Children: _____

NOTICE OF LIEN AND OPPORTUNITY FOR REVIEW
IN THE MATTER OF INTERCEPTION OF LOTTERY WINNINGS
FOR PAST DUE CHILD SUPPORT

Pursuant to 23-7-312, MCA, the CHILD SUPPORT ENFORCEMENT DIVISION (CSED), claims a lien on your Lottery Winnings for past due support. The unpaid balance due on the lien is \$_____.

If you believe the above balance of the lien indicated is incorrect, please be advised that the information provided to the MONTANA STATE LOTTERY was generated at the beginning of the month. As a result, additional payments or additional debt during the month may not be reflected in those figures. The CSED will never keep more than the amount of the lien claimed above.

You may request an administrative review of our interception of your lottery winnings for past due support. If you want to request an administrative review, complete and return the **REQUEST FOR ADMINISTRATIVE REVIEW** (printed on the other side of this letter). Be sure to attach any documents you wish to have considered. The CSED must receive the **REQUEST FOR ADMINISTRATIVE REVIEW** at the above address **WITHIN 10 DAYS OF THE DATE ON THIS NOTICE** or you may lose your right to receive a review.

Upon timely receipt of your **REQUEST FOR ADMINISTRATIVE REVIEW**, a review will be scheduled. Indicate whether you want an "in person" or telephone review. It is your responsibility to be available at the time and place scheduled, or to have someone present to represent you.

If you have questions, contact the CSED office at the address or telephone number listed above. **PLEASE DO NOT CONTACT LOTTERY OFFICES. THE LOTTERY HAS NO AUTHORITY TO CONDUCT A REVIEW OR TO RELEASE THE LIEN.**

Child Support Enforcement Division

SEE OTHER SIDE

REQUEST FOR ADMINISTRATIVE REVIEW

I disagree with the notice I received concerning the interception of my lottery winnings to pay past due child support and I request that the review be conducted. I wish to have the review conducted:

- ☐ by telephone conference. I can be reached at the following telephone number: _____.
- ☐ at the CSED address listed below.

My current mailing address is: _____

I understand that I must notify the CSED of any changes of address. I further understand that later mailings to my address will constitute service of any subsequent notices, orders, or decisions relating to this case. I understand that I may be represented by an attorney or other person. If I or my representative fail to appear on the day and time set for the review, I thereby give up my right to an administrative review.

State your reasons for requesting a review. (Explain, using short, plain statements. Use additional sheets if necessary.) _____

☐ Copies of receipts or other documents are attached for consideration.

I understand this request must reach the CSED on or before _____, and that failure to do so may result in denial of my request. I understand that the CSED can review only matters of support and that other issues such as child custody, visitation, or the use of public assistance money cannot be reviewed. I understand that I am entitled to only one administrative review per each lottery intercept, and that a decision on or denial of this request satisfies my right to review for that intercept.

I understand that, if I am not satisfied with the result of this review, I may request that the record be forwarded to the CSED Hearing Officer for final review.

Date

Your Signature

Your Social Security Number

RETURN TO: Child Support Enforcement Division

Attn: _____

STATE OF MONTANA
BEFORE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

Case No.: _____	)	Concerning:
	)	
IN RE THE SUPPORT OBLIGATION OF:	)	Custodian as of
	)	Notice Date
Obligor.	)	
	)	
	)	Minor Children

NOTICE OF RELEASE OF LIEN

TO THE ABOVE NAMED OBLIGOR:

PLEASE TAKE NOTICE the Child Support Enforcement Division (CSED) has reviewed the status of your child support debt as of __ (date) __, and finds the CSED does not have any child support liens against you. Therefore, your current lottery winnings will be released to you in accordance with Montana State Lottery policy. If the CSED later determines the existence of a child support lien, a lien may be imposed against future lottery winnings, as well as any other real or personal property you now own or later acquire.

DATE: _____

Child Support Enforcement Division

RELEASE OF LIEN

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

IN RE THE SUPPORT OBLIGATION OF:

Obligor

Case Number: _____

Custodian: _____

Children: _____

NOTICE CONCERNING ADMINISTRATIVE REVIEW

TO THE ABOVE-NAMED OBLIGOR:

PLEASE TAKE NOTICE concerning the levy on your Lottery Winnings (CHECKED ITEMS ONLY):

- ☐ 1. Your request for an administrative review is hereby **GRANTED**. You or your representative are required to be present at:

☐ the above address on _____, at _____ .m., Mountain Standard Time, along with all witnesses.

☐ a telephone number convenient to you or your representative on _____, at _____ .m., Mountain Standard Time. You must immediately provide the telephone number(s) where you, your representative and your witnesses can be reached at the time of the review.

You must immediately mail all documents you want considered to the above address so that they will arrive prior to the date of the review.

You must contact the above office immediately if you or your representative cannot be present at the time and place indicated above.

- ☐ 2. Your request for administrative review is hereby **DENIED** because your REQUEST FOR ADMINISTRATIVE REVIEW was not received on or before the last date allowed for its return.

If your request was denied, and you wish to have the record of the determination forwarded for further review to the Child Support Enforcement Division Hearing Officer, complete the back of this form, sign it, date it, and return it to the address listed above, along with a photocopy of the letter notifying you that your lottery winnings have been levied upon.

Date: _____

Child Support Enforcement Division

Telephone: _____

SEE OTHER SIDE

CS-507.5D
(Rev. 5/94)

I request a review of the denial of my request for administrative review.

Date: _____

Signature of Obligor

Address: _____

Telephone

Number: () _____

MONTANA LOTTERY LIENS/INTERCEPT

1. "Unadjudicated debt" ---> Auditor's Office ---> OFFSET; MAPA hearing
 - child support judgment
 - fines, fees (?)
 - repayment
2. "Unadjudicated debt" ---> Lottery Office ---> WRIT OF EXECUTION
(judgments only)
3. "Adjudicated debt" ---> Auditor's Office ---> OFFSET; no MAPA hearing
 - cs judgment
 - fines, fees
 - repayment
4. "Adjudicated debt" ---> Lottery Office ---> Administrative Review
WARRANT FOR DISTRAINT

March 1, 1993

TAX OFFSET BULLETIN

NAFDC Holding Period for Joint Refunds: Current Practice

The CSED currently holds NAFDC offsets received on joint tax refunds for a period of six months before distributing the payments to the CP. This allows the "injured spouse" an opportunity to file a claim for the portion of the refund owed to him or her. The NAFDC holding period applies for both federal and state tax offsets.

[NOTE: Although current Manual pages for state tax offsets do not specifically mention an NAFDC holding period for joint refunds, it is SPU's procedure to hold state offsets for the same amount of time as federal offsets.]

Occasionally the custodial party in these cases will request payment before the six-month period is completed. This Bulletin establishes and briefly describes the CSED policy and procedure for complying with this request.

Tax Offset Release Agreement

The attached "Agreement" (form CS-508.1A) and "Agreement Cover Letter" (form CS-508.1B) have been officially approved by the CSED for use in NAFDC cases. The Agreement authorizes "early" (prior to six months) release of tax offsets on joint refunds where the injured spouse and the absent parent ("the promisors") have agreed the injured spouse will not file a claim to receive the portion of the joint refund, if any, owed to the injured spouse. The Agreement may be used for release of either state or federal tax offsets.

The caseworker should send the forms to the CP in tax offset cases only if the CP specifically requests early release of the offset. The CP is then responsible for forwarding the cover letter and Agreement, obtaining the signatures, and returning the Agreement to the CSED.

IMPORTANT: These procedures should be used for offsets associated with NAFDC debts only. Offsets for AFDC or other debts--even in current NAFDC cases--are not distributed to CPs, so procedures for early release do not apply.

The Agreement must be approved and signed by a Regional Manager or a Team Supervisor, who must ensure the offset being released is for a certified, NAFDC debt. The caseworker keeps the original, signed Agreement in the file and forwards a copy of the Agreement, accompanied by a CSA-7, to SPU.

[NOTE: These forms will not be available on SEARCHS at implementation; regional offices will have to produce the forms manually until we can request an enhancement to the SEARCHS document generation function. Supplies of the forms will be sent to each office as soon as possible.]

Instructions for Manual Maintenance

INSERT

Tax Offset Bulletin (dated March 1, 1993) and attached sample forms at the beginning of section CS 508, Other Civil Enforcement.

TABLE OF CONTENTS CHANGES

Page 6 - Add an interlineation change, "Tax Offset Bulletin (3/1/93) pp 1-2", immediately preceding section 508.1 Montana Income Tax Offset.

MANUAL CHANGES

508.3 Page 8 - Add the following interlineation change as a new item between items 15 and 16:

"15A. Answers any inquiries from custodial parties about early release of offset. Explains procedures for early release. Upon request, completes appropriate portions of tax offset release Agreement (form CS-508.1A) and Agreement Cover Letter (form CS-508.1B), and sends both forms to CP. (CP forwards Agreement and cover letter, obtains signatures of absent parent and injured spouse, and returns Agreement to the CSED.) For returned Agreements, obtains Regional Manager's or Team Supervisor's approval and signature and forwards a copy to Support Payments Unit with form CSA-7."

508.3 Page 9, item 20 - Continue the "NOTE" by adding the following interlineation change after "...to file an adjusted return.":

"Offsets may be released earlier than six months if the "injured spouse" and the absent parent sign a release Agreement (form CS-508.1A), the Agreement is approved and signed by the Regional Manager or Team Supervisor, and a copy is forwarded to the Support Payments Unit with a CSA-7."

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

AGREEMENT

Made this _____ day of _____, 19_____, among the PROMISORS listed below.

PROMISORS: Absent Parent: _____
Injured Spouse: _____
(individual filing jointly with the Absent Parent)
Montana Department of Social and Rehabilitation Services, Child Support Enforcement Division (CSED)

1. The Absent Parent was ordered to pay support for his or her minor children. The Absent Parent did not pay some or all of this support obligation and owes a debt to the CSED for the amount not paid.
2. The CSED informed the taxing authorities of this debt.
3. The PROMISORS have filed a joint income tax return and are entitled to:
☐ a joint federal refund of \$ _____
☐ a joint state refund of \$ _____

Because the Absent Parent owes a debt to the CSED, the taxing authorities have paid this refund to the CSED.

4. All or a portion of the refund may belong to the Injured Spouse, not the Absent Parent. The Injured Spouse is not required to pay the Absent Parent's support debt.
5. The PROMISORS wish to reduce the Absent Parent's support debt by applying the entire joint refund to the debt.

IT IS AGREED:

1. The Injured Spouse will not file a claim for the portion of the joint refund, if any, owed to the Injured Spouse.
2. The PROMISORS agree that the entire joint refund may be applied to reduce the Absent Parent's support debt. The CSED agrees to apply the entire refund to reduce the debt.

Absent Parent

Date

Injured Spouse

Date

CSED Regional Manager or Designee

Date

INFORMATION FOR THE PROMISORS

The purpose of the Agreement is to allow the CSED to use the refund **immediately** to pay the Custodial Party in the support case. Without this Agreement the CSED would hold the refund for six months before paying the Custodial Party and reducing the support debt.

STATE OF _____)
County of _____) : ss.

On the _____ day of _____, 19____, personally appeared before me the above-named ABSENT PARENT, known or proved to me to be the person named herein, and did acknowledge to me that s/he did execute the foregoing agreement on the date first written.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day subscribed above.

(SEAL)

NOTARY PUBLIC

Residing at: _____

My Commission Expires: _____

STATE OF _____)
County of _____) : ss.

On the _____ day of _____, 19____, personally appeared before me the above-named INJURED SPOUSE, known or proved to me to be the person named herein, and did acknowledge to me that s/he did execute the foregoing agreement on the date first written.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day subscribed above.

(SEAL)

NOTARY PUBLIC

Residing at: _____

My Commission Expires: _____

Name of Investigator: _____

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

DATE: _____

FROM: _____

RE: Agreement to Apply Joint Tax Refund

To Whom It May Concern:

The enclosed Agreement relates to your joint federal or state tax refund. The Child Support Enforcement Division (CSED) has received your refund, and is holding it to pay a child support debt.

The support debt is owed by only one of the individuals who filed the joint return. That person is the "absent parent" in a CSED support case. The person who filed jointly with the absent parent is called the "injured spouse." The injured spouse is not responsible for the absent parent's debt, and may file a claim with the taxing authorities to receive his or her portion of the joint refund. For this reason the CSED normally holds the joint refund for six months before applying it to the support debt.

This Agreement says both individuals are willing to apply the entire refund to the support debt. If the Agreement is signed, the CSED will pay the refund amount immediately to the custodian of the minor children. The payment to the custodian will immediately reduce the debt.

If the Agreement is not signed, the CSED will hold the refund for the full six months. If the injured spouse does not file an injured spouse claim, we will pay the refund amount to the custodian when the six months is ended.

Please read and consider this Agreement carefully. If you agree the CSED should use your entire joint refund to immediately reduce the support debt, sign the Agreement. Return the signed Agreement to the CSED Regional Office at the above address. You may also contact the office with questions about the Agreement or the application of the joint refund.

Thank you for your cooperation.

Name of Investigator: _____

Telephone Number: _____

Department of Revenue

section:

OTHER CIVIL ENFORCEMENT

subject:

MONTANA INCOME TAX OFFSET

CHILD SUPPORT ENFORCEMENT

**STATE INCOME
TAX OFFSET:**

If an obligor owes a child support debt to the State of Montana as a result of a written contract, court order or Administrative Order, a state income tax offset may be taken against that obligor to satisfy the debt. The child support debt must be for a sum certain and not reasonably disputed by the obligor. This procedure freezes any potential refund for the current tax year. Once the debt has been placed on tax offset and as long as the obligor remains on the Bradford System, the offset may occur annually against any refund due the obligor until the debt is satisfied. Procedures are mandatory for all appropriate IV-D cases including AFDC, NAFDC, Foster Care and interstate cases.

**INTERSTATE
CASES:**

The offset procedures for Interstate cases is the same as for intrastate cases, except that the initiating state must be notified of the amount offset, and the absent parents name, address and social security number (substitute "Interstate Unit" for "Regional Office" in responsibility sections, and begin with step #1 below).

**INAPPROPRIATE
CASES:**

Cases which do not have a debt established by administrative or court order or written contract will not be placed on Bradford. State tax offset will not be used in cases where the obligor is in compliance with an agreement or court order establishing a child support arrearage and setting a payment schedule, unless the agreement or order provides otherwise.

section:
OTHER CIVIL ENFORCEMENT

subject:
MONTANA INCOME TAX OFFSET

PROCEDURES

Responsibility

ACTION

- Regional Office 1. When a case is received in the regional office and prioritized, submits a CSA-10 (See SPU Manual 101.1) to SPU to include the case on Bradford. (Only those cases where a payment is expected are placed on Bradford). All debts must be verified for accuracy by the applicant or investigator.

Since state tax offset referrals are made on a systems match with State Income Tax, no further information is required from the regional office.

All NAFDC applicants will be notified that tax offsets will be applied first to the State arrears (AFDC and Foster Care), the remainder will be applied to the arrears owed the applicant.

- Support Payments Manager: 2. Verbally requests Research and Information Division to delete previous year's offset list. This allows for the construction of a new list.

3. Submits a request to extract accounts that meet criteria from Bradford System. This is done prior to any returns being processed by Income Tax for the year.

- Income Tax Division 4. Processes return with refund due, showing a "bad debts" delinquency code.

5. Notified Bad Debts/Collection Bureau (hereafter "Bad Debts") of taxpayer information and refund amount.

- Bad Debts 6. Identifies the offset as child support debt, and insures refund is for more than \$20.00. (Refunds less than \$20.00 will not be offset due to

section:
OTHER CIVIL ENFORCEMENT

subject:
MONTANA INCOME TAX OFFSET

negative cost effectiveness.

7. Sends listing to SPU containing offset information on Child Support cases.
- SPU
8. Verifies information from Bad Debts with Bradford.
9. Contacts appropriate regional office with case information and refund amount.
- Regional Office:
10. Checks the account to determine if the refund should be retained (in whole or in part) or released to the taxpayer. (A release of refund could be based a several factors such as: wrong person, paternity not established, account paid in full, etc.)
11. Within 24 hours of the request, advises to SPU to keep or release the offset. If only a portion of the refund is needed to satisfy the child support debt in full, the Regional Office notifies SPU of the amount to be kept.
- SPU
12. Notifies Bad Debts (within 48 hours of receipt of the offset list) to keep or release all or part of the refund.
- Makes note of name, address and social security number on all Interstate cases.
- Bad Debts
13. Sends certified notice to taxpayer that all or part of the refund will be held and the taxpayer has 30 days, from the date of the notice to request a hearing. If a hearing is requested in writing, the request and case information will be transferred to the hearings assistant for an Administrative Hearing.
14. Notifies the taxpayer of the opportunity to have the refund adjusted for joint returns

section:
OTHER CIVIL ENFORCEMENT

subject:
MONTANA INCOME TAX OFFSET

by the Income Tax Audit Bureau. Any appeal from this adjustment will be handled by Income Tax.

Once the adjustment has been completed, Bad Debts will be notified of the amount attributable to the taxpayer. If a hearing has not been requested concerning the adjusted refund, after 30 days Bad Debts completes the transfer to Child Support via journal voucher.

15. If the taxpayer contacts Bad Debts with questions concerning the debt he/she will be referred to the appropriate Regional Office.

Regional
Office:

16. Answers inquiries from obligor concerning offsets:

a. Explains the computations and answers questions. Reach a settlement with the taxpayer if possible (similar to a pre-hearing). If it is determined that all or part of the refund should be returned to the taxpayer SPU is notified to instruct Bad Debts to release the appropriate amount.

b. Explains to the obligor that the administrative hearing must be requested in writing within 30 days of the certified notice (See step #13). If a hearing is requested, in writing, prepare a CS-57 and submit it with appropriate documents to the Hearings Assistant (refer to Administrative Hearings CS-405).

Hearings
Assistant

17. Receives CS-57 and all other written documentation from Regional Office and from taxpayer (if appropriate). Sets an administrative hearing date and time. Hearings Officer conducts hearing and prepares Decision and Order. Sends copy of decision

section:
OTHER CIVIL ENFORCEMENT

subject:
MONTANA INCOME TAX OFFSET

to regional office and taxpayer (all parties).

Pursuant to the Decision and Order, advises Bad Debts to release refund to the taxpayer or transfer refund to Child Support via journal voucher.

Bad Debts 18. If no hearing is requested, after the 30 day period, transfers the refund to Child Support via journal voucher.

SPU 19. Posts offset payment to proper account.

On Interstate cases, sends taxpayer's name, address, social security number and offset amount to Interstate Unit for forwarding to initiating IV-D agency.

Regional Office 20. Whenever the offset collection shows on the distribution report (CR-1) that is to be sent to the welfare offices, the payment is to be identified as an arrears collection so that it won't be counted as a current support payment. The refund is distributed to arrears only. [302.51 (b)(4)(5) and 302.52 (b)(3)(4) CFR

Department of Public Health and
Human Services

section:
OTHER CIVIL ENFORCEMENT

CHILD SUPPORT ENFORCEMENT

subject:
Collection by Federal Offset

SUPERSEDES: CS 508.3, "Federal Tax Offset/Federal Income Tax Refund Offset," April 15, 1989.

REFERENCES: 45 CFR 303.72; OCSE-AT-98-17.

POLICY: Process Overview. As a IV-D agency the CSED must enforce support arrears through a collection process known as "federal offset." Under this process the CSED submits cases with arrears to the federal **Office of Child Support Enforcement (OCSE)**; OCSE validates and forwards the cases to the U.S. Department of the Treasury's **Financial Management Service (FMS)**; and FMS "offsets" federal payments to the obligor by intercepting allowed amounts.

Federal payments subject to offset for support arrears include income tax refunds, salaries, retirement pay, travel reimbursements, and others. Payments excluded from the offset program include certain benefits and assistance payments, and other payments specified by FMS. The complete list of excluded payments is given at the end of this section.

States are required to participate in the federal offset program, but may opt out of any or all "administrative offsets" (payments other than income tax refunds). The CSED has elected to participate in all administrative offsets.

Through December of 1998 the CSED submitted cases for federal offset only once a year. In January 1999 the CSED began submitting cases and updating arrears monthly.

The federal offset process is also the means by which the CSED submits cases for passport denial or revocation, and for location of assets held by multi-state financial institutions.

The remainder of this section describes the specific federal requirements for participation in the federal offset program, and the CSED's automated and manual processes for complying with these requirements. Because the federal offset cycle requires alternating federal and CSED actions, the CSED procedures are presented in context with the federal steps. Detailed federal procedures were still under development at the time of this writing, and the steps listed here represent only

section: OTHER CIVIL ENFORCEMENT

subject: Collection by
Federal Offset

the CSED's understanding of the federal intent. Individual federal steps in this section may change as the result of changes in actual federal procedures, CSED information, or both.

Excluding Cases. Federal parameters allow the CSED to exclude a case from any or all of the following federal processes: tax refund offset, administrative offset, retirement offset, salary offset, vendor/miscellaneous payment offset, passport denial, financial institution match. The CSED "excludes" a case from a particular remedy by suppressing the remedy on SEARCHS. However, CSED policy, based on requirements of federal and state law, limits the use of suppressions to cases where one or more of the following conditions apply (for each condition the type of suppression allowed is given in square brackets):

- (1) A bankruptcy court (or other court of appropriate jurisdiction) has imposed a stay on collection actions against the obligor's assets. [SUPPRESS SPECIFIC OFFSETS AS APPLICABLE, ACCORDING TO THE TERMS OF THE STAY.]
- (2) The arrears amount on SEARCHS is not reasonably certain, and submitting the amount to OCSE would likely result in an update to decrease the amount in a later month. (For example, account adjustments may be pending; or there may be reason to believe the obligor will produce evidence of additional payments.) [SUPPRESS ALL ADMINISTRATIVE OFFSETS; SUPPRESS PASSPORT DENIAL IF APPROPRIATE.]
- (3) The CSED has issued a withholding order to a federal employer and is receiving payments, and the obligor is still working for that employer. [SUPPRESS FEDERAL SALARY OFFSET.]
- (4) The CSED is receiving federal retirement payments under an income withholding order. [SUPPRESS FEDERAL RETIREMENT OFFSET.]
- (5) In highly unusual situations, submission for federal offset would impair the CSED's overall ability to enforce the case. (For example, the obligor receives travel reimbursements from his or her employer, and the CSED is already withholding income from that employer.) [SUPPRESS SPECIFIC

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Federal Offset

ADMINISTRATIVE OFFSETS AS APPLICABLE.]

Travel Reimbursement Payments. Unless specifically excluded by one of the criteria in "Excluding Cases" above, federal travel reimbursements are considered acceptable payment sources, and offsets against them should not be suppressed or (after the fact) refunded. CSED policy does exclude state travel reimbursements from offset, but this policy is based on considerations that do not apply to federal reimbursements.

Bureau of Indian Affairs Payments to Native American Obligors. The CSED determines whether to refund or retain offsets against payments by the U.S. Bureau of Indian Affairs (BIA) on a case-by-case basis. Generally, a BIA payment to a Native American obligor for work performed on the reservation should be refunded. For other fact patterns, CSED policy on Native American jurisdiction for enforcement applies. Note that the CSED does not generally exclude a BIA income case from federal salary offset, since there may be other non-BIA salary payments to the Native American obligor, currently or in the future, that the CSED would retain. Exclusion would apply only where the CSED knows there will be no other federal salary payments in the case.

Identifying eligible cases. A case is eligible for federal offset if it meets the applicable criteria for each of the following characteristics:

- (1) Case status: The case is an open enforcement case that is not interstate responding.
- (2) SSN status: There is a social security number attached to the obligor on SEARCHS.
- (3) Arrears amount: The case has an arrears balance of at least \$25. Once the case is submitted, the following collection-specific thresholds for arrears also apply:
 - (a) Federal administrative offset (all types): \$25
 - (b) Federal tax offset:
\$150 assigned arrears, or
\$500 unassigned arrears
 - (c) Passport denial: \$5,000

("Arrears" may be child, eligible spousal, or a combination.)

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- (4) Child status: the child is a minor. (This restriction applies only to collection of unassigned arrears by federal tax offset; there are no restrictions on assigned arrears or on other types of offset.) "Minor" children include adult disabled children for whom (a) a support order is in effect and (b) the disability was determined while the child was still a minor.
- (5) Spousal support: The parent is living with the child, and child support and spousal support are included in the same order. (This restriction applies only to collection of unassigned arrears by federal tax offset; there are no restrictions on assigned arrears or on other types of offset.)

Each month, SEARCHS identifies cases meeting the above criteria, and includes in the update file all eligible cases that (1) were not included in last month's file, or (2) have had changes in characteristics (see PROCEDURES) since the last month's sweep.

Special Weekly Update. The CSED also separately identifies and submits on a weekly basis the following cases:

- (1) Cases transferred to another state for purposes of administrative review (see section CS 508.5)
- (2) Cases in which administrative review has resulted in a change in arrears
- (3) Cases in which the CSED has refunded offset money to the obligor
- (4) Cases in which downward modification of arrears, or suppression of the passport remedy, has resulted in regained passport eligibility.

PROCEDURES:

RESPONSIBILITY ACTION

TAPP

Supervisor

1. **General information update.** Upon identifying any change in the CSED's general information kept on file with OCSE for federal offset purposes, submits the appropriate update. General information includes the Administrator's certification; local contact information for pre-offset and offset notices; authorization for OCSE to send the pre-offset notices to obligors on behalf of the CSED;

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and electronic funds transfer information.

Caseworker

2. **Case Management.** Upon commencing enforcement in a non-interstate or interstate-initiating case, determines whether collection by federal offset is appropriate. (Offset is presumed to be appropriate unless the case meets one or more of the exclusion criteria described in POLICY.)

a. If federal offset is appropriate, allows automated submission to proceed in the case, and monitors for any change in exclusion status. If exclusion becomes appropriate, proceeds to step 1b; otherwise proceeds to step 11.

b. If federal offset is not appropriate, excludes the case from one or more of the following federal processes by entering on SEARCHS the appropriate suppression code(s):

- All administrative offsets
- Federal retirement offset
- Federal salary offset
- Federal tax refund offset
- Vendor payment/ miscellaneous offset
- Passport denial
- Financial institution match

In selecting suppression codes, excludes only the narrowest possible range of federal processes. For example, if only federal salary offset meets the exclusion criteria, suppression of "all administrative offsets" is not appropriate.

[IN PROGRESS>> At the time of this writing specific suppression codes were not available on SEARCHS. Until they are, suppression of any particular type of offset/remedy requires suppression of all offsets/remedies.]

Monitors for any change in exclusion status. Removes or enters additional suppression codes as applicable.

SEARCHS

3. **Monthly update file.** Monthly identifies cases (1) that are eligible for federal offset this

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month (see eligibility criteria in POLICY), or were submitted for offset in a previous month and have not been deleted, and (2) for which any of the federal offset-related information listed below has changed since the last update. Creates a new update file of identified cases, and transmits the file to OCSE via Connect:Direct.

Federal offset-related information includes

- activity status (the case has moved into or out of enforcement);
- SSN status (a social security number has been identified in the case);
- case status (the case or subcase has opened or closed);
- obligor information (the name or SSN has changed);
- child's minority status (the minority status has changed on a child for whom arrears are owed);
- interstate status (the case has moved into or out of interstate-responding status);
- TANF arrears amount;
- non-TANF arrears amount; and
- suppression code (the case has been excluded, or the exclusion has been removed, for one or more types of offset, or for passport denial or financial institution data match).

4. **Special weekly update file.** Weekly identifies cases in which the CSED has, in the last week, (1) transferred the case to the state that issued the support order, for purposes of administrative review (see section CS 508.5, Federal Offset Administrative Review, for transfer procedures), OR (2) modified the arrears as a result of an administrative review, OR (3) sent a refund ("state payment") to the obligor for an earlier offset, OR (4) modified the arrears from an amount greater than \$5,000 to an amount equal to or less than \$5,000, or suppressed the passport remedy in a case with arrears greater than \$5,000. Creates a file of identified cases, and transmits the file to OCSE via Connect:Direct.

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[IN PROGRESS>> At the time of this writing only items (3) and (4) were scheduled for automated production; cases that qualify in items (1) and (2) will be called in to OCSE by the TAPP Supervisor.]

5. **Notification to responding states.** Monthly identifies interstate initiating cases added or deleted since last month. Prints a letter or initiates a CSENet transaction to each responding state listing the identified cases. (The letter is addressed to the responding state's interstate central registry.)

[IN PROGRESS>> At the time of this writing the necessary CSENet programming was not in place; letters will continue to be sent in hard copy until CSENet can take over the function.]

6. **Notification to obligor.** Includes a notification concerning federal offset in the monthly statement to the obligor. (There is no special SEARCHS action required here, as the notification is standard text; it identifies the latest amount submitted to FMS by referring the obligor to the applicable field on the statement.)

OCSE

7. **OCSE processing, reports, and notices (pre-offset).** Upon receipt of the monthly update file, processes the information as follows:
- a. Performs edit/validation and taxpayer matching for each case.
 - i. Identifies cases with system errors (for example, invalid SSN, name, state code, arrearage); corrects invalid data by edit processing where possible. Sends an edit/validation report to Montana listing identified cases, including cases with corrected errors.
 - ii. Identifies cases with names or SSNs not matched on the IRS taxpayer master file. Sends an "unaccountables" report to Montana listing identified cases.
 - b. Accepts cases not identified in step 7a above;

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also accepts cases identified in step 7a(i) where the error is corrected by the edit process. For all accepted cases, updates the OCSE data master file, and proceeds in 7b(i) through 7b(vi) below as applicable.

- i. For new cases and cases submitted for increases in arrears, holds the case for 90 days, then proceeds to step 7b(ii). For all other cases proceeds immediately to step 7b(ii).
- ii. Electronically transmits the cases to FMS, via weekly update file. (FMS will weekly process the transmission, send the results to OCSE, and update its master file.)
- iii. Upon receiving the FMS results (i.e., confirmation of transmitted data), sends an update report to Montana listing accepted cases from the Montana update file, summary statistics, and any cases transferred to Montana from other states (see step 8).
- iv. For new cases, prepares and mails pre-offset notices to the obligors, using the latest IRS addresses. (The pre-offset notice is included at the end of this section.)
- v. For new cases with arrears exceeding \$5,000, and modified cases with arrears exceeding \$5,000 for the first time since the case was added, transmits the cases to the U.S. State Department for passport denial or revocation. Also notifies the State Department of cases previously transmitted where the arrears have now dropped to \$5,000 or below. (See section CS 508.7, Passport Denial, for CSED response procedures.)
- vi. Informs the Federal Parent Locator Service of all accepted cases, for purposes of financial institution data match with multi-state financial

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institutions.

8. **Transfer cases.** For each "transfer" case submitted in a state's update file, includes the case in the weekly update report sent to the transfer state. A transfer case is a case designated by the submitting state for transfer to another state (the "transfer state") for purposes of administrative review. The transfer state is the state that issued the support order and that must conduct the administrative review. See section CS 508.5, Federal Offset Administrative Review, for procedures for sending or receiving transfer cases.

TAPP
Supervisor

9. **Receipt of OCSE pre-offset reports.** Upon receipt of each edit/validation report, unaccountables report, and weekly update report, reviews the report and responds to OCSE as necessary (for example, to confirm summary statistics). Retains and files one copy of the report in a secure location; sends the other copies of the report to the CSED Regional Managers for use in case management or SEARCHS update at the regional level.

Regional
Manager or
Designee

10. **Standard resolution of OCSE pre-offset reports.** Upon receipt of any report forwarded in step 9, reviews the report; in appropriate cases arranges for SEARCHS update or notifies the caseworker; and files the report in a secure location.

Caseworker

11. **Additional resolution of OCSE pre-offset reports.** Upon becoming aware of a discrepancy listed in a report received in step 10, resolves the error and updates SEARCHS as applicable. Resolution may require detailed investigation into the facts of the case, depending on the type of problem reported (for example, the obligor is not found in the IRS taxpayer master file).

In "unaccountable" cases where OCSE has not been able to obtain an address from the IRS taxpayer master file, contacts the TAPP Supervisor and arranges to send the address to OCSE off-system.

Customer
Service Unit

12. **Pre-offset calls to CSU.** Upon being contacted by an obligor objecting to or questioning the amount listed in a pre-offset notice, transfers the caller

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to the caseworker, and enters the appropriate event on SEARCHS.

Caseworker

13. **Pre-offset contact with the obligor.** Upon being contacted by an obligor in response to a pre-offset notice, prepares and sends to the obligor form CS-508.3A, Letter to Obligor Concerning Submitted Arrears, with a debt computation worksheet showing the updated debt and how it was determined.

Upon being recontacted by the obligor after receipt of the debt computation worksheet, answers the obligor's questions and explains the entries on the debt computation worksheet as needed. Identifies any entries that are not reflected in the amount in the pre-offset notice, and explains that any actual offset will be for the updated amount. Also, takes any action that applies in the substeps below.

- a. If the discussion reveals an error in the amount owed, sends the necessary adjustment to TAPP to correct SEARCHS. If the correction is downward, explains to the obligor that
 - the correction will be submitted automatically in the next monthly update file, and
 - if an offset occurs before FMS receives the update, the CSED will refund the appropriate amount to the obligor.
- b. If the obligor is concerned about offset of a joint income tax refund, explains that the IRS will, at the time of the actual offset, notify the unobligated spouse (the person who has filed a joint return with the obligor) of the steps to take to protect the unobligated spouse's share of the tax refund. Also, where applicable, reiterates the IRS encourages taxpayers to file an injured spouse claim with the tax return (this statement is already included in the pre-offset letter); however, the joint refund will be processed (and subject to offset) before the injured spouse claim is processed.
- c. If after the discussion the obligor still wishes to object to the offset, proceeds as in section CS 508.5, Federal Offset

section: OTHER CIVIL ENFORCEMENT**subject:** Collection by
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Administrative Review.

- d. If the person contacting the CSED is not the obligor in the case, but was identified for offset by the OCSE because of an incorrect social security number, follows the procedures in step 17c or 17d, as applicable (except for issuing a refund).

FMS

14. **Federal payment offset and notice.** For each case maintained in the FMS master file, offsets eligible federal payments to the obligor on a continuing basis.

Distributes offset amounts according to federal priorities for debts collected by the federal government. (In a particular case the CSED may receive all, some, or none of an offset amount. This is because IRS tax debts take priority over all support arrears, and other federal debts take priority over non-TANF arrears.)

Wire-transfers to Montana the total amount distributed to support arrears, less the applicable fee for each case with a collection, and less any federal adjustments. (Federal adjustments occur when the IRS has had to send to an unobligated spouse the spouse's portion of a joint tax refund previously distributed to the CSED.)

In each case where offset amounts are applied to support arrears, sends a Notice of Offset to the obligor explaining that FMS has retained all or part of the federal payment toward satisfaction of past-due support. (The offset notice is included at the end of this section.)

TAPP

Supervisor

15. **Receipt of wire transfer.** Receives a fax notification from OCSE specifying the total amount being transferred by FMS (the offset amount less all applicable fees and adjustments). Makes the necessary arrangements with TRW and the State Treasurer's office to receive the funds, and to distribute the appropriate amounts through SEARCHS.

CSU

16. **Post-offset calls to CSU.** Upon being contacted by an obligor objecting to or questioning a federal offset, transfers the caller to the caseworker and

section: OTHER CIVIL ENFORCEMENT**subject:** Collection by
Federal Offset

enters the appropriate event on SEARCHS. The case note should include any specifics the obligor has disclosed that may be helpful to the caseworker.

Caseworker 17. **Post-offset contact with the obligor.** Upon being contacted by the obligor regarding an offset that has occurred, prepares and sends to the obligor form CS-508.3A, Letter to Obligor Concerning Submitted Arrears, with a debt computation worksheet showing the updated debt and how it was determined. Asks the obligor to send a copy of the Notice of Offset received from FMS.

Upon being recontacted by the obligor after the obligor has received the debt computation worksheet, answers the obligor's questions and explains the entries on the debt computation worksheet as needed. Also, takes any action that applies in the substeps below.

- a. If the amount of the offset was more than the arrears actually owed (because of a modification to arrears that did not reach FMS by the time of the offset, or because of an error discovered in the course of this conversation), proceeds as follows:
 - i. Informs the obligor and requests the appropriate adjustment to SEARCHS. Sends a copy of the offset notice (or the applicable page of the collection report, if the offset notice is not available) to TAPP with the adjustment request.
 - ii. Until the special weekly update required in step 4 is in SEARCHS production, separately notifies the TAPP Supervisor the adjustment will result in the refund of a federal offset.
 - iii. If the offset was against a joint tax refund, informs the obligor the CSED refund will be made payable to both the obligor and the unobligated spouse named in the offset notice.

IMPORTANT: In generating a two-party warrant to refund a joint offset, TAPP

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Federal Offset

will determine the name of the unobligated spouse by consulting the Notice of Offset, or the address information report included with the collections report. TAPP will not rely on a name provided by the obligor unless the name is verified by the federal information.

[IN PROGRESS>> At the time of this writing the necessary programming to write two-party warrants was not in place; until this enhancement is obtained, see section CS 508.9 for procedures for releasing refunds of joint tax offsets.]

- b. If the offset was for a case where the child emancipated after the CSED's last monthly update, and the federal offset declining balance in the case was reduced to \$0, determines whether the offset occurred before the date of emancipation. If so, requests the payment be released to the obligee. If not, requests an adjustment to refund the money to the obligor.
- c. If the offset amount was correct, but the obligor does not agree with the determination and wishes to contest the offset, explains the opportunity for administrative review, and proceeds as in section CS 508.5.
- d. If the person contacting the CSED claims he or she is not the obligor in the case, but was identified for offset only because the CSED submitted his or her social security number instead of the obligor's, verifies the person's identity through appropriate means. If the person is not the obligor, promptly requests an adjustment to pre-release the appropriate amount to the non-participant; sends a copy of the offset notice to TAPP with the adjustment request. Corrects the social security number on SEARCHS.
- e. If the person contacting the CSED is not the obligor in the case, but was identified for

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Federal Offset

offset by the OCSE because he or she filed a tax return using the obligor's social security number, refers the contacting person (the taxpayer) to the IRS. The IRS will correct its records, adjust the collection sent to Montana, and issue a refund to the taxpayer. (The same procedure applies if the taxpayer and the obligor have been assigned the same SSN by the Social Security Administration. The IRS will issue a refund to the taxpayer, and have him or her obtain a new SSN from SSA.)

OCSE

18. **OCSE collection report, arrears reduction.** Sends a monthly collection report to Montana listing, for each case, the amount of the offset before the fee and any adjustments are subtracted. Includes with the collection report an IRS name change report and an IRS address information report. In cases involving offset of a joint tax refund, the reports also contain the name of the unobligated spouse. In cases where the IRS has, during the month, paid an unobligated spouse claim against an offset previously paid to Montana, the collection report lists the case and the amount of the claim; this amount is subtracted from the total collections sent to Montana for the month.

For each case reduces the arrears amount in the OCSE data master file by the full amount of the offset.

TAPP

Supervisor

19. **Receipt of OCSE collection report.** Upon receipt of the monthly collection report and accompanying IRS information reports, retains and files one copy of the reports in a secure location. Disseminates the other copies to the regional offices. Arranges for reconciliation of the collection report with the wire transfer in step 15.

SEARCHS

20. **Automatic system update.** Updates system information as follows:
- a. Updates accounts and declining balances according to the funds received in step 15, crediting the obligor with the full offset amount (before the fee is deducted). Distributes the actual amount received (the

section: OTHER CIVIL ENFORCEMENT**subject:** Collection by
Federal Offset

offset less the fee) to each obligee. For offsets against joint income tax refunds in non-TANF cases, delays disbursement to the obligee for six months.

NOTE: Notice of Fee Amount. In non-TANF cases the amount deducted by FMS for the fee is noted on the state warrant. The federal fee amount changes annually; the current amount is available to participants in the automated message accessed through the CSED's interactive voice response number.

- b. Sends a tickler to the caseworker for each federal offset or adjustment.

[IN PROGRESS>> At the time of this writing the programming for this tickler was not in place; until it is, the caseworker must review the monthly collections report or monitor the SEARCHS accounting screens to be informed of a payment.]

21. **Notification to responding states.** Monthly identifies interstate initiating cases for which collections have been received in step 20. Within 10 working days of the receipt and disbursement of each collection, initiates a CSENet transaction to the responding state notifying the state of the amount of the collection. Also notifies the responding state of any federal adjustment (see step 14). For collection by federal tax offset, does not disclose the filing status.

[IN PROGRESS>> At the time of this writing the necessary CSENet programming was not in place; until it is, the caseworker must continue to notify the responding state within 10 working days by sending form CSE-IIUP, Update to Responding State.]

Regional Manager
or Designee

22. **Collection report safeguarding.** Upon receiving the collections report and accompanying IRS information reports, notifies caseworkers as appropriate (according to regional procedures); files the reports in a secure location.

Caseworker

23. **Case management based on offset information.** Upon

section: OTHER CIVIL ENFORCEMENT**subject:** Collection by
Federal Offset

receiving a tickler generated in step 20b for a collection by federal offset, takes appropriate enforcement action in the case, consulting the collection report and the IRS name change and address information reports as necessary. Actions may include initiating enforcement against a new payment source, or suppressing the particular type of offset that resulted in the collection. (Suppression may apply, for example, if the offset came from a federal salary and the CSED is able to identify the federal employer and begin income withholding.)

If the offset is from a joint income tax refund in a non-TANF case, and the obligor or obligee contacts the CSED for early disbursement of the funds to the obligee, follows the procedures in section CS 508.9, Releasing Joint Federal Tax Offsets.

If the offset creates a refundable amount proceeds as in step 17a.

Optional: Checks the IRS address information report and name change report that accompany the collection report; resolves any discrepancies; updates the SEARCHS name or address if applicable.

section: OTHER CIVIL ENFORCEMENT**subject:** Collection by
Federal OffsetPAYMENTS EXCLUDED FROM ADMINISTRATIVE OFFSET

- Benefit payments from the Department of Veterans Affairs
- Payments made by the Department of Education under Title IV of the Higher Education Act
- Social Security payments
- Railroad Retirement payments
- Payments made under Part B of the Black Lung Benefits Act
- Payments under means-tested programs that, upon request, are exempted by the head of the Federal agency which administers the program
- Any type of payment, upon the written request of the head of the agency which authorizes the payments, if the offset would tend to interfere substantially with, or defeat the purposes of, the payment agency's program
- Payments made under the Internal Revenue Code of 1986 (except Tax Refund payments that are subject to Administrative offset under separate authority)
- Payments made under the tariff laws of the United States

section: OTHER CIVIL ENFORCEMENT**subject: Collection by
Federal Offset**

CHILD SUPPORT ENFORCEMENT DIVISION
DEPARTMENT OF REVENUE MS 01550
550 W 7TH AVE 4TH FL
ANCHORAGE AK 99501-6699
INSTATE (800) 478-3300

CHILD SUPPORT ENFORCEMENT DIVISION
W 7TH AVE 4TH FL
ANCHORAGE AK 99501-6699
PHONE(S): (907) 269-6900

NOVEMBER 17, 1997

** CONTACT ADDRESS ABOVE **

48

MR AND/OR MS JOHN DOE
3331 ANYSTREET BLVD
ANYTOWN USA 99999-0123

SSN	CASE NUMBER	LOCAL ID	PAST DUE AMOUNT CLAIMED
992-12-3456	33331Z97RN1	001	\$520 (NON-TANF)

The agency identified above has determined that you owe past-due child and/or spousal support. Our records show that you owe at least the amount shown above. If this amount is not paid in full within 30 days from the date of this notice, it will be referred to the United States Department of the Treasury for collection by Administrative Offset and/or Federal Tax Refund Offset. Under Administrative Offset (31 U.S.C. Sec 3716), certain Federal payments which might otherwise be paid to you will be intercepted, either in whole or in part, to pay past-due child support and/or spousal support. Under Federal Tax Refund Offset (42 U.S.C. Sec 664; 26 U.S.C. Sec 6402) any Federal Income Tax Refund to which you may be entitled will be intercepted to satisfy your debt.

Effective October 1, 1997, if you owe arrearages of child support in an amount exceeding \$5,000, as certified by the agency identified above, the Secretary of State will refuse to issue a passport to you, and may revoke, restrict or limit a passport which was previously issued. The amount of your past-due support will also be reported to consumer reporting agencies.

If you have been notified previously that your debt was being referred to the Financial Management Service for collection, this notice is to inform you that if your debt is not paid within 30 days from the date of this notice it will be subject to collection by Federal Tax and/or Administrative Offset. Your debt will remain subject to collection by Federal Tax Refund and/or Administrative Offset until it is paid in full. This means that Federal Tax Refunds and certain other Federal payments due to you now or in the future will be offset without further prior notice.

You have a right to contest our determination that this amount of past-due support is due, and you may request an administrative review. To request an administrative review you must contact us no later than DECEMBER 17, 1997 at the address or phone number listed above. If your support order was not issued in our state, we can conduct the review or, if you prefer, the review can be conducted in the state which issued the support order. If you request, we will contact that state within 10 days after we receive your request and you will be notified of the time and place of your administrative review by the state which issued the order. All requests for administrative review must be made by contacting the agency identified above.

If you are married, filing a joint income tax return, and you incurred this debt separately from your spouse, who has no legal responsibility for the debt and who has income and withholding and/or estimated tax payments, he or she may be entitled to receive his or her portion of any joint Federal Tax Refund. If your spouse meets these criteria he or she may receive his or her portion of the joint refund by filing a Form 8379 - Injured Spouse Claim and Allocation. Form 8379 should be attached to the top of the Form 1040 or 1040A when you file, or be filed according to other instructions as indicated on the Form 8379.

Important: If you owe current support and you fail to pay your obligation in full and on time, any arrears accruing due to payments missed after the date of this notice may be added to your debt and will be subject to collection by Federal Tax Refund and/or Administrative Offset without further notice. To determine additional amounts owed after the date of this notice, or the total amount past-due which the agency has submitted for collection, you may contact us at the address or phone number listed.

section: OTHER CIVIL ENFORCEMENT

subject: Collection by
Federal OffsetDEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
P.O. BOX 1686
BIRMINGHAM, AL 35201-1686**ATTENTION: YOUR FEDERAL PAYMENT HAS BEEN REDUCED**

02/12/99

MR. JOHN Q. PUBLIC
1254 MAIN STREET
ANYWHERE, USA 24351-1019

Dear JOHN Q. PUBLIC

Your payment due from the paying agency referenced below has been reduced by the amount shown below as "Amount of this Offset" to satisfy in whole or part your delinquent debt owed to the United States.

Your delinquent debt was referred to the U.S. Department of the Treasury's Financial Management Service by the Creditor Agency referenced below for this process, known as administrative offset. Administrative offset is authorized by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

The Creditor agency has previously notified you of the amount and nature of your debt and has made demand upon you for payment. You were notified of the creditor agency's intent to collect your debt by administrative offset if you failed to pay your debt, and the rights available to you. Your failure to resolve this debt has resulted in this offset. If you have any questions regarding this offset, or wish to avoid future offsets against your Federal payments by repaying any remaining debt, please contact:

INDIANA FAMILY/SOCIAL SERVICES ADMN At: (317) 233-6897 TIN NO: 120-00-0000
In the State of: Indiana Call:
Nationwide Call: Toll Free 1-800-748-0456 Debt Trace No: A00258077
INDIANA FAMILY/SOCIAL SERVICES ADMN FINANCIAL ENHANCEMENT UNIT
402 W. WASHINGTON ST., ROOM E-442 P.O. BOX 7133
INDIANAPOLIS IN 46207-7133 Acct Num: 100509966699
Offset Amount this Creditor: \$2109.00 Creditor: 28 Site: IN

Sincerely,

Debt Management Services
Financial Management Service, U.S. Department of the Treasury (800) 304-3107

PAYEE NAME: John Q. Public TYPE OF PAYMENT: EFT
PAYING FEDERAL AGENCY: Internal Revenue Service
PAYMENT AMOUNT BEFORE OFFSET: \$2109.00 PAYMENT DATE: 02/12/99
AMOUNT OF THIS OFFSET: \$2109.00 applied to delinquent debt
FOR OFFICIAL USE ONLY: 000003076&A0035807731378969804764849114A

May 23, 1999

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Department of Public Health and
Human Services

section:

OTHER CIVIL ENFORCEMENT

CHILD SUPPORT ENFORCEMENT**subject:**

Federal Offset
Administrative Review

SUPERSEDES: ✓ CS 508.4, "Federal Tax Intercept Administrative Reviews--Overview and Policy," November 1, 1989;
✓ CS 508.6, "Federal Tax Intercept Administrative Reviews--In-State Reviews," November 1, 1989;
CS 508.8, "Federal Tax Intercept Administrative Reviews--Interstate Requests," November 1, 1989.

REFERENCES: 45 CFR 303.72

POLICY: Federal regulations governing the federal offset program require that if the CSED receives a complaint from an obligor concerning the CSED's submission of the obligor's case for federal offset, or concerning an offset that has already occurred as a result of the CSED's submission, the CSED must conduct an administrative review "to determine the validity of the complaint." Regulations do not specify the proofs required in, or the opportunities for appeal from, the administrative review. The CSED has chosen to conduct the review at the regional manager level, with appeal available in the form of a federal offset hearing conducted by the CSED Administrative Law Judge. This section addresses only the regional manager's review--technically the only "administrative review" required. Policy and procedures for appeal via CSED federal offset hearings are given in section CS 405.20.

Regulations also state that if a case is submitted for federal offset by a state that did not issue the support order in the case, the obligor may request the administrative review be conducted by the state that issued the order. If the obligor takes this option, the case becomes a "transfer case" for purposes of federal offset administrative review. Montana can be involved in a transfer case in two ways: (1) as the state that submitted the case for offset but did not issue the order, and (2) as the state that issued the order but did not submit the case for offset. This section describes both processes.

Federal regulations for transfer cases require the state with the order to conduct the review and make a decision within 45 days of receiving the request from the submitting state. In non-transfer

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(Montana submitting) cases, CSED policy adopts the same 45-day requirement for a review decision, although there are no federal time frames for these cases.

In non-TANF cases where an administrative review is requested before money from an offset collection is disbursed to the family, the CSED delays disbursement pending the results of the review.

A federal offset administrative review is not considered an adjudication of the debt for purposes of other CSED enforcement actions.

PROCEDURES:

RESPONSIBILITY	ACTION
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MONTANA CASES (INCLUDING INTERSTATE INITIATING)

Caseworker	1. Upon being contacted by an obligor in response to an OCSE pre-offset notice, a CSED pre-offset statement (obligor bill), or an FMS offset notice, follows procedures in section CS 508.3, Collection by Federal Offset, for preparing and sending a debt computation worksheet, explaining how the debt was determined, and attempting to resolve the obligor's concerns. (If the obligor is responding to an offset submitted by another state, refers the obligor to the other state for relief. If the obligor is requesting a review in Montana because Montana issued the support order in the case, explains the submitting state must send the referral to Montana to initiate the review.)
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If the obligor's concerns are resolved, enters a SEARCHS case note documenting the contact and the resolution. If the obligor's concerns cannot be resolved, proceeds to step 2.

2. Determines whether the federal offset case is eligible for administrative review. Review is available if any of the following circumstances apply:

- (1) The CSED has never performed an administrative review in the case.

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- (2) The CSED has previously performed an administrative review in the case, but the obligor is now disputing months that occurred after the latest review.

EXAMPLE: The CSED submitted arrears of \$600 in October, and the obligor requested an administrative review at that time. The review determined the amount was correct. The obligor continued to pay current support for the next six months, but made no payment on arrears, so the case was not modified to OCSE. In April the obligor contested the same \$600, **claiming he made a payment on the arrears in January.** The obligor must be granted an administrative review, because he is disputing a month that was not included in the previous review.

- (3) In unusual situations, the obligor is disputing the CSED's (or the federal government's) jurisdiction or authority to enforce by federal offset in the case, and there has been no previous administrative review where the obligor could have raised this objection. For example, the obligor is disputing the CSED's authority to enforce against a pay source that is protected by a court-ordered stay on the collections, or that comes under the exclusive jurisdiction of a Native American tribe, and the pay source had not been offset at the time of any previous review. (Note that it should be possible to resolve most of these claims before they get to administrative review.)

If the case is eligible for administrative review, proceeds to step 3. If the case is not eligible for administrative review, explains a review is not available and proceeds in step 2a or 2b below.

- a. If the obligor accepts this determination, enters a SEARCHS case note documenting the denial and the reason, and takes no further action.

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- b. If the obligor insists on a review, proceeds to step 3. (Unless new information is provided by the obligor in the written request, the request will be denied in step 6, allowing the obligor to request a hearing on the denial.)
3. Informs the obligor an administrative review is available, and explains the following aspects of the review process as applicable:
 - (1) The review must be requested in writing, using the Request for Administrative Review provided by the CSED or an equivalent document.
 - (2) Montana law will be used to interpret the support order upon which the offset is based.
 - (3) If the support order was issued by another state, the obligor may request that Montana forward the case to that state for administrative review.
 - (4) Any debt for which the CSED has issued and resolved a notice in another action (such as income withholding) will be automatically confirmed during the administrative review without further examination.
 - (5) In a non-TANF case the CSED will inform the obligee of the time and place of the review.
4. Prepares form CS-508.6A, Response to Inquiry about Federal Offset and Request for Administrative Review. Refers the case, with the prepared form, to the regional manager. (If the caseworker assigned to the case is the regional manager, the regional manager should refer the case to the CSED staff attorney, who becomes the "designee.")
5. Reviews and signs the response letter portion of the form; sends the entire original form (response and request) to the obligor by regular mail and retains a copy in the case

Regional Manager
or Designee

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file.

6. Upon receipt of a signed Request for Administrative Review, enters a SEARCHS case note for the date received and proceeds as follows:

a. If an administrative review is available according to the criteria in step 2, sends a copy of the request to the OALJ and retains the original in the case file. Immediately instructs the caseworker to place a hold on disbursement of any offset collections received toward non-TANF arrears.

i. If the request is for an administrative review in Montana, proceeds to step 7.

ii. If the request is for an administrative review in the state (other than Montana) that issued the support order, refers the case to the caseworker for processing under "TRANSFER CASES--OUTGOING," later in this section.

b. If an administrative review is not available, prepares form CS-508.6B, Notice Concerning Administrative Review, denying the request and stating the reason. Mails the original to the obligor; sends a copy to the OALJ, and retains a copy in the case file. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

7. Prepares form CS-508.6B, Notice Concerning Administrative Review, granting the request and scheduling the review for a date within 5 to 10 working days after the request was received. Manages the remaining procedures in this process to ensure that an administrative review decision is rendered within 45 calendar days after the written request was received.

Prepares the necessary exhibits. Sends the

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original Notice Concerning Administrative Review and a copy of each exhibit to the obligor by regular mail. Sends a copy of the notice to the OALJ and retains a copy of the notice and each exhibit for the case file. In a non-TANF case also sends a copy of the notice to the obligee.

If the obligor requests a postponement for good cause (for example, the obligor needs more time to gather payment receipts), and submits the request in writing, enters a SEARCHS case note and reschedules the review for a later date.

8. On the date scheduled conducts an administrative review by telephone with the obligor. Explains the exhibits, other case documentation, and the CSED position. Accepts arguments, evidence, and documentation from the obligor. Advises the obligor that the CSED will issue a determination in writing within 5 working days after the review.

If the obligor fails to appear for the review and no good cause for postponement has been presented, makes a decision based on the material in the case record.

9. Within 3 working days after the administrative review, evaluates the case record, makes a decision, and prepares and sends a letter to the obligor notifying him or her of the decision.

The letter must

- state how the amount submitted for offset will change, or that the amount will remain in effect as submitted;
- identify the order or judgment on which the amount is based;
- specify the revised or confirmed amount and the period of time it covers, calculated in accordance with Montana law;
- explain how the obligor's arguments, evidence, or documentation did or did not affect the amount determined by the review; and

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- list the mailing address of the Office of the Administrative Law Judge (OALJ), and inform the obligor that he or she may request a hearing on the decision by submitting to the OALJ both (1) a written request for hearing containing the obligor's case number and social security number, and (2) a copy of the Financial Management Service's Notice of Offset showing that an offset has actually occurred. If an offset has not yet occurred, the letter should further explain that any request for hearing will be denied until an offset has occurred.

Sends a copy of the letter to the OALJ and retains a copy in the case file. In a non-TANF case also sends a copy of the letter to the obligee. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

Caseworker

10. Implements the determination from the review as follows:

- a. If the review determines that no adjustment to the amount submitted for offset is required, and
 - federal offset is proper with respect to the case facts and any applicable pay sources, removes any hold placed on disbursement of offset collections in step 6a, and takes no further action.
 - federal offset is not proper with respect to the case facts or certain pay sources, takes the necessary steps to suppress the applicable remedies or pay sources; if the determination creates a refundable amount, also proceeds in step 10b as appropriate.
- b. If the review determines that an adjustment to the amount submitted for offset is required, takes the following steps:

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- i. Requests the appropriate adjustment from TAPP; includes in the adjustment request the date of the administrative review decision. Does not delay initiation of the adjustment process pending receipt of an offset collection from FMS.
- ii. Immediately notifies the TAPP Supervisor of the review-related adjustment, for purposes of the special weekly update required in section CS 508.3.

TAPP

Supervisor

- 11. Upon being notified of an adjustment in step 10, notifies OCSE of the change in the submitted amount within 10 working days after the review decision. (Note that administrative review adjustments are included in the special "weekly" update in section CS 508.3, despite the slightly longer time frame allowed for reporting these events.)

[IN PROGRESS>> At the time of this writing an enhancement to automatically identify and report these adjustments to OCSE was not in place; until it is, the caseworker and TAPP Supervisor must continue to work together to comply with the federal time frames via manual process.]

Also, until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment results in a refund of an offset amount, notifies OCSE of the refund within one week of issuance.

Caseworker

- 12. If a written request for a hearing on the denial in step 6b or the decision in step 9 is received in the regional office, immediately forwards the request to the Office of the Administrative Law Judge for processing. Follows the procedures in section CS 405.20, Federal Offset Hearing.

TRANSFER CASES--OUTGOING (MONTANA SUBMITTED OFFSET)

Caseworker

- 1. Within 10 calendar days of receiving a request

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in "MONTANA CASES" step 6a(ii) for a review by the state (not Montana) that issued the support order, takes action in steps 1a and 1b below.

- a. Enters the appropriate transfer indicator on SEARCHS, along with the name of the state to which the case is being transferred, and the appropriate local code. (SEARCHS then identifies the case as a transfer case, and includes it in the next special weekly update file sent to OCSE, as described in section CS 508.3.)

[IN PROGRESS>> At the time of this writing the enhancement for this indicator was not in place. Until it is, the caseworker must contact the TAPP Supervisor manually and provide the following information: case number and type (TANF/non-TANF), obligor's name and social security number, name of other state with local code, and submitted amount. The TAPP Supervisor will notify OCSE as required.]

- b. Notifies the IV-D agency in the other state (the "transfer state") by initiating a CSENet transaction and preparing and sending to the other state's interstate central registry the following documents:

- (1) Form CSE-TRAN, Interstate Transmittal, indicating that the action requested is an administrative review for federal offset.
- (2) A copy of the support order and any modifications.
- (3) A copy of the payment record or the obligee's affidavit.
- (4) A debt computation worksheet, showing how the debt certified for offset was determined.

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- (5) Copies of any applicable correspondence received from or documents provided by the obligor.
 - (6) In non-TANF cases, the obligee's address.
- c. In non-TANF cases also takes the following actions:
- i. Immediately places a hold on disbursement of any offset collections received.
 - ii. Notifies the obligee that Montana has sent the case to another state for federal offset review, and that the obligee's address is being provided to the IV-D agency in the other state.
 - iii. Before releasing the obligee's address to the other state, checks SEARCHS for any reason to protect the information. If found, attaches a clear warning with the address that release of the information to another party could result in harm to the obligee or children.
- d. Monitors the case for action by the transfer state. If results are not received within 45 calendar days after the interstate referral in step 1b, contacts the transfer state, and proceeds to step 2 when results are obtained.
2. Upon being notified of the results of the review, enters a SEARCHS case note listing the results; in a non-TANF case notifies the obligee of the review results.

If the transfer state has modified or deleted the case as a result of the administrative review, also takes action in steps 2a and 2b below.

- a. Immediately requests an adjustment to implement the change on SEARCHS. (Note

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that special reporting via Montana's weekly update file (see section CS 508.3) is not required; it is the duty of the state conducting the review to report modifications resulting from the review to OCSE within 10 working days.)

- b. Until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment creates a refundable amount, separately notifies the TAPP Supervisor of the refund, referencing the adjustment requested in step 2a. Does not delay initiation of the refund process pending receipt of the offset money from FMS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) is required; it is the duty of the submitting state to report refunds of federal offsets to OCSE on a weekly basis.)

NOTE: Montana Bound by Transfer State's Decision. A submitting state must abide by the decision of the state holding the administrative review, and must take all steps necessary for a speedy refund, if one is required as a result of the decision.

TRANSFER CASES--INCOMING (OTHER STATE SUBMITTED OFFSET)

Administrative
Support Unit

1. Upon receiving a request from another state for administrative review in a transfer case (usually in the form of an incoming interstate transmittal), forwards the request to the Interstate Regional Manager.

Interstate
Regional
Manager

2. Upon receiving a request for administrative review from the submitting state in a transfer case, determines whether the support order was issued in Montana. If not, so advises the other state, and takes no further action.

If the support order was issued in Montana, determines whether the information received

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with the interstate transmittal is sufficient to conduct a review. If not, sends a letter to the submitting state requesting the necessary information, and takes no further action in this section until the information is provided.

Proceeds with the review as described in "MONTANA CASES" steps 7 through 12, except for the following differences:

- a. Calculates the 45-day time frame for rendering an administrative review decision beginning with the date the CSED received the request and sufficient information from the submitting state.
- b. Uses the documents received from the submitting state as the exhibits for the review.
- c. Sends to the submitting state a copy of the Notice Concerning Administrative Review. Does not send copies to the obligee.
- d. In conducting the review, explains the submitting state's position. Ensures the decision is based only on the accuracy of the arrears, and whether the arrears are legally enforceable under Montana state law. Does not base the review on Montana-specific policy considerations, such as whether Montana would have submitted the case for offset under its own procedures.
- e. Reports the results of the review to the submitting state via form CSE-TRAN, Interstate Transmittal ("acknowledgments" section), or by sending a copy of the letter to the obligor to the submitting state, or both. Makes sure the submitting state is informed that a federal offset hearing is available to the obligor to dispute the review determination.
- f. If Montana is not a responding state in

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the case, omits steps 10 and 11 with respect to SEARCHS adjustments.

- g. If the review results in a change in the amount certified by the submitting state, works with the TAPP Supervisor to submit the modification or deletion to OCSE within 10 working days, listing the other state--not Montana--as the submitting state. (OCSE will accept the one-time modification or deletion from Montana only if (1) the correct submitting state is named in the information submitted by Montana, and (2) the submitting state has previously submitted the case with a "transfer" transaction type, naming Montana as the transfer state.)

[IN PROGRESS>> At the time of this writing the special weekly reporting of administrative review adjustments was not automated; until it is, the TAPP Supervisor must manually submit these cases.]

Department of Public Health and
Human Services

section:
OTHER CIVIL ENFORCEMENT

CHILD SUPPORT ENFORCEMENT

subject:
Passport Denial and Revocation

SUPERSEDES: [new section]

REFERENCES: 42 U.S.C. §652(k); OCSE-AT-98-17; OCSE-DC-99-41.

POLICY: The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 established passport denial as a remedy for the enforcement of child support arrears. Under this remedy the U.S. Secretary of State must refuse to issue a U.S. passport to an obligor owing arrears in an amount exceeding \$5,000, and may revoke, restrict, or limit a passport issued previously to that obligor.

[IN PROGRESS>> At the time of this writing the State Department's revocation/restriction mechanism was not in place. Until this capability is added, the passport "denial" remedy will have no enforcement effect in cases where the obligor already holds a passport.]

The passport denial remedy operates as a "piggyback" program to the federal offset remedy described in section CS 508.3. When the federal Office of Child Support Enforcement (OCSE) receives a state's submission for federal offset, it automatically identifies and certifies to the State Department all cases with arrears exceeding \$5,000. OCSE also automatically decertifies a case (removes the certification with the State Department) when arrears are modified to \$5,000 or below. OCSE excepts from certification (or decertifies if applicable) cases submitted with passport denial exclusions.

Because states are required to submit cases that qualify for regained passport eligibility **weekly**, states such as Montana that submit federal offset updates only monthly must submit an additional, special weekly update for passport relief purposes. See section CS 508.3 for complete specifications for Montana's special weekly update file.

In urgent situations (limited to life or death, or erroneous initial submission of the case) a process is available for expediting a return of passport eligibility outside of the weekly update process.

Passport denial is a mandatory federal remedy. States may not refuse to participate in the remedy by simply excluding all submitted cases from passport denial. Exclusions are available only on a case-by-case basis

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according to the specific policy established by the submitting state. The CSED allows exclusion of a case from passport denial only when (1) the conditions in section CS 508.3 with respect to bankruptcy or uncertainty of debt apply, or (2) in highly unusual situations, the supervisor determines a waiver of the \$5,000 threshold is appropriate (see PROCEDURES, this section).

PROCEDURES:

ResponsibilityAction

Office of
Child Support
Enforcement
(OCSE)

1. Weekly identifies cases in which the obligor's child support-related passport eligibility has changed since the previous week. Creates a file containing the identified cases and transmits the file to the U.S. Department of State (State Department).

(REMINDER: For child support purposes, the obligor becomes ineligible for a U.S. passport when arrears in the case exceed \$5,000, and regains eligibility when arrears drop to \$5,000 or below. If the case is excluded from the passport remedy, the obligor retains eligibility regardless of the arrears amount.)

U.S. Department
of State (State
Department)

2. Upon receipt of the weekly file from OCSE, implements the changes in eligibility as follows:
 - a. In cases where an individual has lost eligibility, sets a "deny" indicator on the passport agency's computer system. If the system shows that the individual currently holds a U.S. passport, proceeds to step 4; otherwise, proceeds to step 3.
 - b. In cases where an individual has regained eligibility, removes the "deny" indicator from the passport agency's computer system, and follows standard agency procedures for any subsequent passport application received from

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the individual. (Does not take special steps to notify a previously denied obligor that he or she may now reapply.)

3. Upon receipt of an application for a U.S. passport from an individual flagged for denial on the basis of child support, denies the application and sends a letter to the obligor explaining the reason for the denial. (A sample of the denial letter is included at the end of this section.) The letter also informs the applicant (the obligor) that he or she may reapply when the State Department is notified by the proper agency that the child support arrearage is satisfied. Takes no further action until notified by OCSE that the individual has regained eligibility; then proceeds in step 2b.
4. Upon being notified in step 2 that an individual who currently holds a U.S. passport has become ineligible on the basis of child support, initiates action to revoke the passport according to standard agency procedures.

[IN PROGRESS>> At the time of this writing the revocation mechanism was not operational. Until it is, the State Department will take no child support-related action against current passport holders who are flagged for denial. Passports, once granted, remain in effect for 10 years.]

Customer
Service Unit

5. Upon being contacted by an obligor objecting to or questioning a passport denial or revocation, explains that the State Department automatically denies/revokes passports when arrears exceed \$5,000; transfers the caller to the caseworker and enters the appropriate event on SEARCHS.

Caseworker

6. Upon being contacted by an obligor whose application for a passport has been denied in step 3, or whose passport has been revoked in step 4, explains the passport denial/revocation process and the threshold of \$5,000, and identifies the obligor's specific complaint.

- a. If the obligor claims arrears do not exceed \$5,000, but SEARCHS shows arrears do exceed \$5,000, follows the procedures in section CS 508.5, Federal Offset Administrative Review,

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to resolve the complaint.

- b. If the obligor agrees with the arrears amount shown on SEARCHS but wants to discuss relief from the passport remedy, explains the following options:

- (1) **Normal Processing.** If the obligor reduces the arrears amount to \$5,000 or below, eligibility will be returned within approximately two weeks of payment.

(PROCESSING SCHEDULE REMINDER: When a payment is received that reduces arrears from an amount exceeding \$5,000 to an amount equal to or less than \$5,000, or when the passport remedy is suppressed in a case with arrears exceeding \$5,000, SEARCHS identifies the reduction or suppression and includes the case in the next special weekly update to OCSE. OCSE includes the case in its next weekly transmission to the State Department; the State Department removes the passport flag, and the obligor may then reapply for the passport.)

- (2) **Expedited Processing.** If passport eligibility is required in a life-or-death situation, the obligor may request expedited processing of the case. If approved, passport eligibility can be returned within 48 hours. Note that the obligor must still reduce the arrears to \$5,000 or below, unless a waiver is approved (see (3) below).

- (3) **Waiver of Arrears Threshold.** In highly unusual cases, where continued ineligibility will do greater harm in the case than a continued arrears balance (see the EXAMPLE BELOW), or in a life-or-death situation, the obligor may request a waiver of the \$5,000 threshold, subject to acceptable payment arrangements. If a waiver is approved, the return of eligibility will be processed as in (1)

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above, unless expedited processing also applies.

EXAMPLE OF POSSIBLE **WAIVER** SITUATION: An obligor gets a good job flying for a surveying company, and is paying current support plus an amount toward arrears each month via income withholding. His company has told him he must get a passport so he can begin flying routes that extend over Canada, and if he does not he will lose his job. His debt is very large and it will be a long time before it is reduced to \$5,000. His company is not willing to wait that long.

7. Upon receiving a request from the obligor for expedited processing, enters a SEARCHS case note for the request, and evaluates the facts of the case. If expedited processing applies, proceeds to step 10. If expedited processing does not apply, informs the obligor, enters a SEARCHS case note, and takes no further action.
8. Upon receiving a request from the obligor for a waiver of the \$5,000 threshold, evaluates the facts of the case, makes a recommendation to the supervisor, and enters a SEARCHS case note for the request received, the action recommended, and the supervisor's decision. If the supervisor grants the waiver, suppresses the passport denial remedy on SEARCHS, and takes no further action.

Supervisor

9. Upon receiving a recommendation from the caseworker concerning a requested waiver of the \$5,000 threshold, determines whether the obligor's continued ineligibility for a passport will do greater harm in the case than a continued arrears balance. If so, or if for some other reason the return of the obligor's eligibility is justified by the extreme circumstances of the case, waives the \$5,000 threshold and approves specific terms of relief.

CAUTION: At the time of this writing the necessary mechanism for revoking a passport on the basis of child support arrears was not in place. Without this mechanism, a passport issued to the obligor

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may remain valid for 10 years. It is essential, therefore, that the CSED carefully review the enforcement prospects in the case before granting any exception in this step.

Caseworker 10. If expedited processing applies, contacts the TAPP Supervisor to arrange for and confirm receipt of the necessary payment. Does not proceed to step 11 until notified that the check, credit card, or other means of payment has cleared. (If expedited processing applies but a payment is not required because of terms granted in step 9, proceeds immediately to transmission of the notice in step 11.)

11. Upon confirmation of payment in step 10, immediately prepares, obtains the signature of the CSED authorized representative on, and transmits by fax to the OCSE Special Collections Unit form CS-508.7A, Notice of Withdrawal of Passport Denial. (CSED "authorized representatives" are designated by regional policy.) Informs OCSE of any time requirements specific to the case.

Sends a copy of the notice to the obligor, and instructs the obligor to contact the local passport office to reapply for a passport. Explains that the notice itself does not restore eligibility, but is provided only to expedite the "recheck" at the passport office.

OCSE 12. Upon receipt of a Notice of Withdrawal of Passport Denial, forwards the information to the State Department in the next weekly file, or sooner if necessary, for processing.

Local Passport Office 13. Upon presentation by the obligor of a signed Notice of Withdrawal of Passport Denial, rechecks the federal automated system for passport eligibility. Accepts the obligor's application for a passport (or for reactivation of the original application) only if the regained eligibility appears on system.

NOTE: Original Applications Held for 60 Days. The State Department will issue a passport without requiring another application from the obligor if the recheck showing the regained eligibility occurs within 60 days of the initial denial. After 60

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days the State Department "abandons" the original application, and the obligor must reapply.

- Caseworker 14. At the request of an obligor whose passport application has been denied in step 3 and for whom expedited processing does not apply, if the next special weekly update to OCSE will include
- a reduction of arrears to \$5,000 or below, as explained in step 6b(1), or
 - a suppression of passport denial entered in step 8,
- prepares and sends to the obligor form CS-508.7A, Notice of Withdrawal of Passport Denial. Explains the notice is provided only to expedite the "recheck" (see step 13) at the local passport office. Does not send the notice to OCSE.

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Attachment A

Dear _____:

This is in reference to the passport application you executed on _____. The Department of State has determined that you are ineligible to receive a passport. This determination is based on Section 51.70(a)(8) of Title 22 of Code of Federal Regulations and the certification of the Secretary of Health and Human Services that you are in arrears of child support in excess of \$5,000.00.

Section 51.70(a)(8) reads as follows:

51.70 - Denial of Passports

(1) A passport, except for direct return to the United States, shall not be issued in any case in which:

(8) The applicant has been certified by the Secretary of Health and Human Services as transmitted from a State agency to be in arrears of child support in an amount exceeding \$5,000.00.

Neither this Passport Agency nor the Department of State has information concerning the details of your child support obligation. A list of State child support enforcement agencies and their phone numbers is attached to this letter for your use.

Your passport application is no longer on file with this Passport Agency. The refund of your passport fee and any special postage fees is in process. However, by law, the \$15.00 execution fee cannot be refunded. If you paid a fee for expedited service, that also is not refundable.

This decision is not appealable with the Department of State. However, once the Secretary of Health and Human Services has certified to the Secretary of State that you have satisfied the child support arrearage, you will again be eligible to apply for a U.S. passport. You may reapply for a passport by executing a new passport application at an authorized passport acceptance facility. The new application must be accompanied by proof of U.S. citizenship, proof of identity, two photographs, and appropriate fees. When you reapply, bring this denial letter with you.

Attachment:

List of State Child Support Enforcement Agency Telephone Numbers

DSL-695-04

Department of Revenue

section:

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subject:

Workers' Compensation Intercept

INTRODUCTION:

Most injured workers are entitled to file a claim for benefits at the Montana Department of Labor and Industry, Workers' Compensation Division. Four types of Workers' Compensation benefits are available:

- Temporary Weekly Benefits - usually 2/3rds of the gross weekly pay prior to the injury;
- Temporary lump sum - usually a negotiated figure after proof of need has been shown by the claimant;
- Partial Weekly Benefits - usually 1/2 of the statewide weekly average wage; and,
- Final lump sum settlements which are negotiated between claimant and insurer.

Under Montana law, most employers are required to maintain Workers' Compensation insurance. This coverage may be through the Montana State Compensation Insurance Fund (Plan 3), private insurance companies (Plan 2), or, if the employer is sufficiently large, self insurance (Plan 1).

WORKERS' COMPENSATION INTERCEPT FOR CHILD SUPPORT

The 1987 Montana Legislature amended MCA § 39-71-743 to allow the Child Support Enforcement Bureau to intercept the Workers' Compensation Benefits of those persons owing a child support debt. The Locate Unit Supervisor has been designated as the responsible person for coordinating and recording these intercepts.

POLICY:

1. Weekly benefits can be intercepted by income withholding even if no portion of the benefits has been designated for current support or arrears. After determining that weekly benefits are being paid to an obligor, an Order to Withhold should be implemented as quickly as possible to maximize collections.

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NOTE: When intercepting weekly benefits, special limitations on garnishment apply: all amounts to be intercepted must be determined using the Child Support Guidelines as per Para- graph 2(a) of §39-71-743 MCA, even if the resulting amount is less than the administrative or court ordered amount. Under no circumstances shall the amount exceed 50 percent of the obligor's weekly benefit in accordance with Bureau Policy.

2. When a lump sum settlement is to be issued, only the amount designated as child support may be garnished (see MCA § 39-71-743 (2)(b)). Since most Workers' Compensation cases will ultimately conclude with a lump sum settlement, investigators must remain in close contact with the adjuster and/or injured worker's attorney to ensure that, when possible, an amount is designated in the "petition for settlement" for payment of child support.

NOTE: In the event a case involving a lump sum settlement needs to be intercepted by other means, the regional supervisor and staff attorney should be consulted to provide the proper direction and assistance.

PROCEDURE:

ESTABLISHING WORKERS' COMPENSATION INTERCEPT

Responsibility

ACTION

- | | |
|-------------------------|--|
| .Locate Unit | 1. Once each month, requests a computer match between all open Child Support cases and all active Workers' Compensation Benefit files and mails the resulting list to the respective regional offices. |
| .Caseworker/
Typist: | 2. Determines which individuals will have benefits intercepted, based on information available in the case file. To assist in this determination, necessary information can be obtained from: the Workers Comp Match Listing (report #CSE05035), an inquiry into the Workers' Compensation Data- |

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base, or by phone or written request from the obligor's W/C caseworker.

3. Determines the amount of money to be withheld monthly from weekly benefits as the lesser of:

- The maximum amount withholdable under income withholding as described in Manual Sections CS 510.1 through 510.9 (see MCA § 40-5-416);

OR

- The amount which the obligor would be expected to pay under the Child Support Guidelines described in Manual Sections CS 404.1 through 404.4, even if the resulting amount is less than the administrative or court ordered amount. (A copy of the worksheet used in making this determination must be attached to the Order to Withhold when it is forwarded to locate for intercept.)

NOTE: If no income information is available for the obligor, the amount should be based solely upon the weekly benefits received.

OR

- 50 percent of the obligor's weekly benefit.

4. Prepares form CS-510.8A "Order to Withhold" and form CS-510.8B "Income Withholding Set-up/Change Form" in accordance with Section CS-510.8, addressing the order as follows:

- a. IF THE CARRIER IS THE STATE FUND (Plan 3):

Claims Manager
State Compensation Insurance Fund
Workers' Compensation Division
5 South Last Chance Gulch
Helena, MT. 59620

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b. IF THE CARRIER IS SELF-INSURED OR A PRIVATE INSURANCE CARRIER (Plan 1 or 2):

Insurance Adjuster's Name

Insurance Carrier's Name

Insurance Adjuster's Street Address

Insurance Adjuster's City, State and ZIP

NOTE: All orders to withhold must be sent using Certified mail. The region originating the intercept must prepare all the paperwork necessary for certified mailing, including an envelope addressed to the insurer.

5. Forwards entire packet to the Locate Unit, makes appropriate case notes, and diaries for return.

.Locate Unit

6. Upon receipt of the intercept packet, logs the necessary information, inserts a slash sign after the child support case number and adds the letters "IA" after the slash.
7. Sends the Order to Withhold, using the pre-addressed envelope and certification paperwork to the proper addressee.

NOTE: In the case of an order going to the State Fund, include an additional informational copy to the Chief of the Insurance Compliance Bureau.

8. Retains a copy for the Locate Unit files and sends a copy to the originating region.

NOTE: If, at any time, it is discovered that the obligor's weekly benefit has decreased or increased, a complete recomputation of the withholding amount must be accomplished (see step 3). When modifying or terminating an Order to Withhold, utilizes the same process as specified above but in accordance with Manual Sections CS 510.9 and 510.10.

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



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August 1, 1995

To: All CSED Manual Holders
From: Gwen Kloeber, Policy Development Officer *gk*
Subject: Section 508.14, Credit Bureau Reporting Replacement Pages

Policy Change

A CSED case qualified for automatic credit bureau reporting whenever the obligor owed a support debt equal to or greater than ONE MONTH's support obligation. The policy has been changed. Under the new policy, a CSED case qualifies for automatic credit bureau reporting whenever the obligor owes a support debt equal to or greater than SIXTY DAYS support obligation.

Arrears only cases are not affected by this policy change. All arrearages are reported on an arrears-only case, regardless of the unpaid balance.

Reason for change

Changes were made to prevent noticing (on the bill) those cases in which date of collection is an issue.

Instructions for Manual Maintenance

Remove existing pages 1 through 6 of 13 (dated January 23, 1995). Insert the attached pages 1 through 6 of 13 (dated August 1, 1995). Indicate the August 1, 1995, date of pages 1-6 in the Table of Contents.

Effective Date

The change in policy became effective July 1.

Attachments



Department of Social and
Rehabilitation Services

section:
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Credit Bureau Reporting

CHILD SUPPORT ENFORCEMENT

SUPERSEDES: CS 508.14, "Credit Bureau Reporting," January 23, 1995.

REFERENCE: 45 CFR 303.105; sections 40-5-261, 31-3-102, 31-3-124, MCA.

POLICY: Contract Basis for Credit Bureau Reporting. The CSED will make support debt information available to consumer reporting agencies that have signed contracts with the CSED. Contract discussions may be initiated at the request of the agency, or by the CSED upon determining an arrangement with the agency may be beneficial to the CSED.

The CSED will pursue and execute contracts with only those consumer reporting agencies that it determines

- have sufficient capability to systematically and timely make accurate use of support debt information, **and**
- have furnished satisfactory evidence of meeting the definition of "consumer reporting agency" given in section 31-3-102(4), MCA.

The term "credit bureau" is used in the remainder of this section to refer to a CSED-contracted consumer reporting agency.

Disclosure of support debt information to credit bureaus will be periodic and automatic; the CSED will not charge a fee to recover the cost of providing the support debt information.

Qualified Cases. A CSED case qualifies for automatic credit bureau reporting whenever (1) the obligor owes a support debt equal to or greater than 60 days support obligation, or the case is an arrears-only case, **and** (2) the case is not an incoming interstate case. (If the obligor in an incoming interstate case also owes a debt in an open Montana case (for the same or a different family), the Montana debt is subject to CSED credit bureau reporting by the Interstate Region.)

Notice of Proposed Release of Information. The CSED must provide advance notice to the obligor of its intent to release information to the credit bureau. The notice must contain the support debt dollar amount, and must inform the obligor of the methods available for contesting the accuracy of the information. The primary vehicle for this notice is the CSED's Child Support Statement- (the bill), issued monthly to all obligors.

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The CSED may also include notice of credit bureau reporting in any of its regular enforcement notices, including those issued in connection with the following processes: support order registration (for enforcement); administrative income withholding; license suspension; notice of support debt (based on support order); federal tax offset; state bad debt offset; and perfection of support lien. This "piggyback" form of notice requires that the underlying enforcement notice contain a support debt dollar amount.

In other CSED notices not concerned with support debt--for example, in notices about support order establishment, registration, or modification; paternity establishment; or medical penalty assessment--the CSED may warn obligors that if a debt is incurred it may be reported to the credit bureau. This is a courtesy warning only; it does not qualify as official "advance notice" for purposes of credit bureau reporting, and need not give methods for contesting the accuracy of reported information.

Although the CSED is required to give notice to the obligor before releasing support debt information, **the notice need not be "actual notice."** The CSED need not positively prove it has given the obligor the information directly and personally, as long as it takes reasonable steps to inform the obligor of its intent--whether or not the obligor actually comes to know of it.

IMPORTANT: Notice Scenario. Practical application of the above notice requirement in daily casework may result in the following scenario: The obligor accrues a child support debt that qualifies for credit bureau reporting. In the course of regular casework the CSED sends the monthly Child Support Statement, which contains notice of its intent to report the qualified amount.

- > If the statement is not returned, the CSED presumes the obligor has received the statement, with the required credit reporting notice.
- > If the statement is returned undelivered, the CSED still presumes proper receipt of credit reporting notice, because the particular enforcement notice ordinarily associated with (and issued upon) the accrual of the debt (NOI, SNOI, Notice of Support Debt, for example) will have contained official notice of credit reporting.

If, after the debt is reported, the obligor objects to the action on the basis of lack of notice, the caseworker

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checks the case file for documentation of proper service of notice. In unusual situations, the caseworker may discover (1) the Child Support Statement was not delivered, and (2) no enforcement notice was served in connection with the reported debt amount (for example, the reported debt includes arrearages accrued since the last withholding notice). In these situations the CSED simply informs the obligor of the methods for contesting the accuracy of the reported debt (see below), and acts upon any request received according to standard procedures.

Contesting Accuracy of Reported Amounts. The obligor may contest the accuracy of the support debt amount released or proposed for release to credit bureaus by requesting one or all of the following remedies:

- (1) Informal administrative review by the CSED regional office--may be requested at any time after the CSED specifies the amount of the support debt that may be reported to the credit bureau.

NOTE: Timing of Review. The informal review may be conducted at any time, separately or in conjunction with any CSED hearing in the case. In cases where the CSED has not yet reported the debt, the caseworker should make every effort to conduct the review **before** the amount is reported to the credit bureau.

- (2) Reinvestigation by the credit bureau--may be requested at any time after the CSED reports the support debt and the information appears in the credit bureau record (see procedures at section 31-3-124, MCA).
- (3) Administrative hearing by the CSED Office of the Administrative Law Judge (OALJ)--may be requested at any time **after** (a) the CSED has reported the debt, **and** (b) the obligor has requested and obtained a reinvestigation by the credit bureau. (Informal review is not required.) The OALJ will determine whether these requirements are satisfied, and will grant or deny the request accordingly. Findings of the hearing officer are subject to judicial review.

NOTE: Res Judicata. At the hearing the obligor may not raise defenses concerning the accuracy of the debt amount reported to the credit bureau if the defenses - were previously ruled on by a court or administrative final decision and order, OR

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- were put at issue by a CSED notice served on the obligor in connection with a regular enforcement process (see "Notice," earlier in this POLICY), and the obligor failed to timely request a hearing.

NOTE: Payments Made After Order or Notice. Where either of the conditions in the above NOTE applies, the obligor may still contest the accuracy of the debt if the obligor alleges there were payments on the debt after the period identified in the order or notice.

Reporting Mechanism. The CSED reports or "certifies" support debt information to credit bureaus electronically, by providing a computer tape in an agreed format. The tape is produced by SEARCHS batch process, and includes the obligor's name, social security number, address, certified support debt amount, and credit reporting code. (The code describes the degree of delinquency and the reportability of the debt. Generally, the CSED uses a code that reflects a 30-day delinquency and a sum-certain dollar amount. However, the credit bureau may choose to view the record as an unrated report.) The credit bureau enters the information in its record for the obligor.

The credit bureau record displays the unpaid balance and highest ever debt. The highest ever debt remains on credit bureau records for seven years. Data on the unpaid balance will remain on credit bureau records until the unpaid balance is paid in full, suppressed, or the CSED is no longer enforcing the case. The information reported to the credit bureau on each obligor is updated monthly, whether or not a change occurs.

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Downward Corrections. When a downward correction has been or will be reported by tape match, the CSED must, at the request of the obligor, provide a copy of the corrected Debt Computation Worksheet for the obligor to place in his or her credit file. The Debt Comp must include all months affected by the correction, and will serve to document CSED corrections to debts previously reported to the credit bureau. (Generally the credit bureau will not allow the CSED to place written information in the file, but will allow the obligor to do so.)

Relationship of Child Support Statement and Credit Bureau Reporting. The monthly Child Support Statement specifies the debt amount that will be reported to the credit bureau. (This "reportable debt" is usually different from the total payable debt also listed on the statement.) Credit bureau reporting of the reportable debt occurs in the second month after the statement month. SEARCHS design calls for the Child Support Statement (dated the last day of the month) to be issued as soon as possible after month-end processing, and for the corresponding credit reporting tape to be run and mailed after month-end processing and billing for the next month. This allows time for the obligor to decrease the amount to be reported by paying some or all of the debt, or to contact the CSED to discuss or contest the accuracy of the amount to be reported.

EXAMPLE: An obligor with an arrears balance through October of \$400 and a monthly obligation of \$300 makes no payments in November. The statement of November 30 (issued after November month-end) lists a reportable debt of \$700, and advises the obligor the amount will be reported to the credit bureau unless arrears are reduced before December 31. The credit reporting tape run in early December does not list the debt or the obligor at all. In December the obligor pays current support but makes no payments on the debt. The tape run in early January (after December month-end and the December 31 statement) reports the obligor with a debt of \$700.

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Payments on Reportable Debt. In creating the credit reporting tape SEARCHS uses the lesser of

- the reportable debt amount listed on the corresponding Child Support Statement, or
- the debt shown by the obligor's SEARCHS accounts on the date the tape batch is run.

Therefore, if an obligor makes payments on a reportable debt before the tape is created, the amount actually reported will be less than the reportable amount listed on the statement. (In the above EXAMPLE, if the obligor makes an additional payment of \$100 in December, the January tape will list the debt at \$600.) The support debt amount shown on the BIL screen is the amount projected (from the statement) for credit bureau reporting; the amount actually reported is shown on the CRD screen.

Payments in Full, Loss of Enforcement Authority. The CSED must notify the credit bureau within 30 days when

- an obligor pays a reported support debt in full, or
- the CSED is no longer enforcing a reported support debt.

Normally the SEARCHS automatic billing and credit reporting cycles will satisfy this requirement, using the latest account balances and case enforcing statuses (open/closed) to create update tapes at one-month intervals. Because these cycles depend on month-end timing, however, it is possible for the interval between two credit reporting tapes to be more than 30 days. If the payment in full (or loss of enforcement authority) occurs at the very beginning of that interval, there could be a technical compliance situation.

EXAMPLE: SEARCHS creates the monthly credit reporting tape on March 6 (after February month-end and billing). An obligor pays a support debt in full on March 7. The next credit reporting tape is run on April 8, 33 days after the last tape, and 32 days after the debt was paid in full.

When payment in full or loss of enforcement authority will not be reported within 30 days by SEARCHS tape match, the CSED must timely notify the credit bureau in writing, stating the debt has been paid in full, or the CSED is no longer enforcing the debt.

Also in regard to payment in full, an obligor may require proof of the payment to present to a lending institution, employer, or other person **before** the next tape match (even when the update will occur within 30 days). In this

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situation the CSED will, at the request of the obligor, prepare a hard-copy release stating the debt has been paid in full **and specifying the time period(s) covered by the release.** (The release should not imply the obligor is released from any current or future support obligation.) If an obligor owes a support debt in more than one case, a release is appropriate only when all of the debts are paid in full.

Suppression--SEARCHS Capability and Program Restrictions. Although SEARCHS is designed to allow suppression of credit bureau reporting in individual cases (via the CAS screen), **caseworkers may not suppress reporting except as described below.** The Regional Manager or supervisor must approve all suppressions.

EXCEPTIONS: In cases where the debt amount is not reasonably certain, and reporting of the SEARCHS amount would likely result in downward correction of the amount in a later month, the CSED may suppress credit bureau reporting. (For example, account adjustments may be pending; or, there may be reason to believe the obligor will produce evidence of additional payments.) In highly unusual situations there could be other exceptions, where credit reporting would impair the CSED's overall ability to enforce the case. Suppressions based on an "overall enforcement" advantage should be approved only when supported by very strong case facts.

When reporting is suppressed, the tape submitted to the credit bureau will contain no listing for the obligor, unless there is already a CSED-certified debt amount on file with the credit bureau for the obligor. If this is the case, the tape will list the obligor with the appropriate code indicating there is an adjustment pending and the CSED is not able to certify a specific dollar amount. If the obligor owes a support debt in more than one case, the "suppression" code will appear on the tape if reporting is suppressed in **any** of the obligor's cases.

Automatic Suppression. If a caseworker suppresses an obligor's Child Support Statement, **SEARCHS will automatically suppress credit bureau reporting as well** (because the required notice can no longer be presumed). Caseworkers should be aware of this consequence in considering whether to suppress a bill. In some cases the reason for suppressing the statement also satisfies the

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condition for suppressing or disqualifying a case from credit reporting (for example, the debt amount is not reasonably certain, or the accounts in the case are overpaid and no debt exists). In other cases the support debt is reportable, and suppression of the statement will take away an important enforcement option. The Regional Manager or supervisor must approve all Child Support Statement suppressions.

Use of Credit Bureau Information. The CSED can obtain information about an obligor by direct electronic inquiry to credit bureau records. The CSED Locate Unit performs all credit bureau inquiries. Three types of credit reports are available to the CSED:

- (1) Tracer report--contains updated address only.
- (2) Short credit report--contains "identifying information" only (name, present address, place of employment, social security number, and date of birth).
- (3) Full credit report--contains identifying information, credit history, and names of individuals or businesses that have made inquiries on the obligor; **available for enforcement cases only.**

NOTE: Contract Option: Automatic Full Credit Reports. Where the credit bureau contract allows, the CSED may also arrange to receive full credit reports automatically for certain obligors, by designating those obligors for "watch status" with the credit bureau. Under this arrangement the bureau will send the CSED a full credit report whenever there is a new external inquiry on the designated obligor. **This feature is not intended for frequent use, but only for special cases where information on new inquirers is likely to lead directly to successful location or enforcement.**

Generally the CSED must provide a name, social security number, and address to obtain any of the above reports; infrequently, a name or social security number alone will prove to be sufficient.

There is generally no charge for tracer reports. Some credit bureaus charge for short credit reports, and **all credit bureaus charge the CSED for full credit reports.** Caseworkers should consider the cost of credit reports when requesting either one-time or automatic ("watch status") production. (For example, when this POLICY was printed one credit bureau was charging the CSED up to \$3.00 for each

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full credit report produced.)

PROCEDURE:

Responsibility	ACTION
Central Office	Identifies consumer reporting agencies meeting the criteria listed earlier in this section (see "Contract Basis" under POLICY). Negotiates contract with individual consumer reporting agencies whereby the CSED provides debt information to the agency (section I below) and the agency provides credit reports to the CSED (section II below). Contracted consumer reporting agencies are referred to as "credit bureaus."

Asterisked steps (*) in I and II below require entry of system case notes. See "events" listed on SEARCHS for credit bureau reporting and for general case processing.

I. Procedures for Reporting Obligor Information to Credit Bureau

- | | |
|------------|--|
| Caseworker | <ol style="list-style-type: none"> 1. Responds to telephone inquiries from obligors regarding credit bureau reporting processes, time frames, and amounts. 2. At any time upon identifying a case qualified but not appropriate for credit bureau reporting (see POLICY, "Suppression"), suppresses credit bureau reporting on CAS screen with approval of supervisor. Monitors case for resolution of suppression situation; restores automatic credit bureau reporting when appropriate. Resumes any procedures begun in step 4 or 7. 3. Upon contact by obligor wishing to contest accuracy of amount reported or to be reported, advises obligor of available methods and, if appropriate, proceeds to step 4 (informal review), step 7 (credit bureau reinvestigation), or step 8 (administrative hearing). |
|------------|--|

NOTE: Lack-of-Notice Claims. This step also applies to contacts from obligors claiming lack of advance notice of credit reporting; available remedies still involve contesting the accuracy of the reported amount.

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- *4. Upon request of obligor, conducts informal administrative review of support debt amount reported or to be reported to credit bureau. Works with obligor to identify and resolve discrepancies in monthly ordered amounts and payments, using current Debt Computation Worksheet and any information provided by obligor.

If debt has not yet been reported, attempts to resolve issue prior to next SEARCHS batch run that would report the noticed debt.

Where timing allows (following notice or actual reporting), uses opportunity of next available CSED hearing in the case to conduct review.

5. Before proceeding to step 6,
- If review indicates debt amount is inaccurate, and correct amount can be determined, makes necessary adjustments to SEARCHS accounts.
 - If review indicates credit bureau reporting is not appropriate at this time, takes action to suppress as in step 2.
6. Informs obligor of results of review; takes action in step 12 (to supplement electronic reporting) if necessary. If obligor is dissatisfied with determination, explains opportunity for administrative hearing following credit bureau reinvestigation. If obligor is satisfied with review results, takes no further action.
- *7. Upon receipt of written request from credit bureau for verification of reported debt pursuant to a reinvestigation, reviews accuracy of debt amount using information from current Debt Computation Worksheet. Responds in writing using any forms and within any time limits required by credit bureau, confirming or revising debt amount in question; keeps copy for case file. (If no time limit specified by credit bureau, responds within one week after receipt of verification request.)

IMPORTANT: Some credit bureaus will remove the debt from the record if the response is not received timely. The caseworker may wish to set a SEARCHS

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tickler to ensure CSED compliance with reinvestigation time frames.

If debt amount is revised, adjusts SEARCHS accounts accordingly and takes action in step 12 (to supplement electronic reporting) as needed.

If reinvestigation indicates credit bureau reporting is not appropriate at this time, takes action to suppress as in step 2.

8. Upon receiving request from obligor for administrative hearing on accuracy of debt noticed for credit bureau reporting, determines whether following conditions are met:
- debt has been reported to credit bureau, and
 - obligor has obtained a reinvestigation by the credit bureau.

If so, proceeds to step 9. If not, explains hearing is not available at this time; advises obligor of other remedies (informal review, credit bureau reinvestigation) and proceeds accordingly.

- *9. Completes and sends to obligor form CS-405.2, Request for Hearing, with instruction to attach proof of credit bureau reinvestigation before submitting to OALJ. Advises OALJ of any enforcement notices issued in the case and their resolution.

NOTE: Proof of Reinvestigation. The credit bureau's official reinvestigation response letter to the obligor is proof the obligor has exhausted this remedy. If the obligor cannot produce the letter the caseworker should provide the OALJ with evidence of the reinvestigation from the case file, if available.

OALJ

- *10. Upon receipt of Request for Hearing on credit reporting issue, determines whether (1) CSED has reported debt in question and (2) obligor has obtained reinvestigation by credit bureau.
- If not, informs obligor hearing is not available.
 - If so, schedules hearing, issues hearing notices, and conducts hearing in accordance with requirements of sections 40-5-226 and 40-5-253, MCA. Advises parties of results of hearing.

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- Caseworker 11. Adjusts SEARCHS accounts to reflect any support debt changes determined at hearing. If adjustments result in reduction of support debt, takes action in step 12 (to supplement electronic reporting) as needed.
- *12. At any time during credit reporting process takes actions in 12a through 12d as needed to supplement monthly electronic updating.
- a. If support debt paid in full and obligor requires proof before next SEARCHS tape match-- Prepares and provides to obligor, with copy to case file, release stating debt has been paid in full and giving applicable dates.
 - b. If support debt paid in full and payment will not be reported by SEARCHS tape match within 30 days--Writes and mails letter to credit bureau, within 30 days after payment, stating debt has been paid in full.
 - c. If CSED loses authority to enforce support debt (case closed, for example) and change will not be reported by SEARCHS tape match within 30 days---Writes and mails letter to credit bureau, within 30 days after loss of authority, stating CSED no longer enforcing debt.
 - d. If CSED determines reported debt amount is inaccurate (and correct amount can be determined) and obligor requests correction to historical information in credit file--Prepares and mails to obligor corrected Debt Computation Worksheet for all months affected by correction; retains copy for case file. (Obligor may use Debt Comp to "correct" history in his or her credit file.)

II. Procedures for Obtaining Obligor Information from Credit Bureau

- Caseworker *1. Submits written request to Locate Unit for credit bureau report on individual obligor (see POLICY, "Use of Credit Bureau Information," for types of reports available); includes identifying information and case activity status.

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NOTE: Requests for Full Credit Reports. A caseworker may request a full credit report **only** when the case is in enforcement status, or has a legally enforceable support order. Also, the caseworker must consider the cost of a full credit report in determining whether to request this information.

2. Identifies case where continuing full credit reports on obligor would be both helpful **and** cost effective. Notifies Locate Unit to designate obligor for "watch status" with participating credit bureaus. Removes "watch status" as soon as automatic report no longer needed.

Locate Unit *3. Upon receipt of written request from caseworker, performs electronic processing to obtain requested credit report. (If applicable, designates obligor for "watch status" with participating credit bureaus.) Before processing any request for **full credit report(s)**, satisfies legal requirements for use of report by verifying request is for **enforcement case**. Receives credit report electronically; forwards hard copy to caseworker.

Department of Revenue

section:
OTHER CIVIL ENFORCEMENT

CHILD SUPPORT ENFORCEMENT

subject:
Full IRS Collection Services

POLICY:

Under certain circumstances, the Child Support Enforcement Bureau (CSEB) can ask the Internal Revenue Service (IRS) to use its full powers to collect a child support arrearage (45 CFR § 303.71). The request must be certified by the federal Office of Child Support Enforcement (OCSE) Regional Representative in Denver, and the CSEB is required to pay the collection costs incurred by the IRS.

Before Montana can submit a case to the IRS for full collection services, the Regional Representative, Region VIII, OCSE/FSA must certify the case, based on the CSEB application. The application for certification must be made on the form prescribed and provided by the OCSE. If the application does not meet federal requirements, the Regional Representative will attempt to correct it in consultation with the CSEB. If the application cannot be corrected through consultation, it will be returned to the CSEB with an explanation of why the case was not certified to the IRS.

All "reasonable" enforcement efforts to collect the arrearage must have been attempted by the CSEB, the custodial parent, or the custodial parent's representative prior to application for IRS services.

A case certified for full IRS collection because of another state's failure to enforce may result in the imposition of penalties against that state. For this reason, the final decision of whether or not a case should be submitted for certification rests with the Bureau Chief.

NOTE: Full IRS collection may be useful when a resident obligor has non-exempt assets located outside the boundaries of Montana, or within an Indian reservation. For an explanation of non-exempt assets, see CS 504.3, "Implementing Liens."

CASES ELIGIBLE FOR CERTIFICATION

To be eligible for certification to the IRS, a case must meet the following criteria:

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OTHER CIVIL ENFORCEMENT

subject:
Full IRS Collection Services

a. If case is not eligible for certification returns to caseworker/typist for further investigation, as necessary.

b. If case is eligible for certification and meets information requirements, approves for application preparation and returns to caseworker/typist.

.Caseworker/
Typist

3. Prepares and retains one copy of form OCSE-20 (available from the Administrative Support Unit in Helena). Prepares five (5) copies of supporting documentation, retaining one copy of each document for the case file.

4. Forwards original form OCSE-20 and four copies of supporting documents to Bureau Chief.

.Bureau Chief
(or designee)

5. Reviews form OCSE-20 and supporting documentation.

a. If application is disapproved, returns it and supporting documentation to the originating CSE Regional Office.

b. If application is approved, signs and forwards it to the Administrative Assistant for further processing and mailing.

.Administrative
Assistant

6. Upon receipt of an approved and signed application, makes 4 copies, returns one copy to caseworker/typist, and mails original form OCSE-20 and 3 copies, along with the four copies of the supporting documentation to the OCSE Regional Representative.

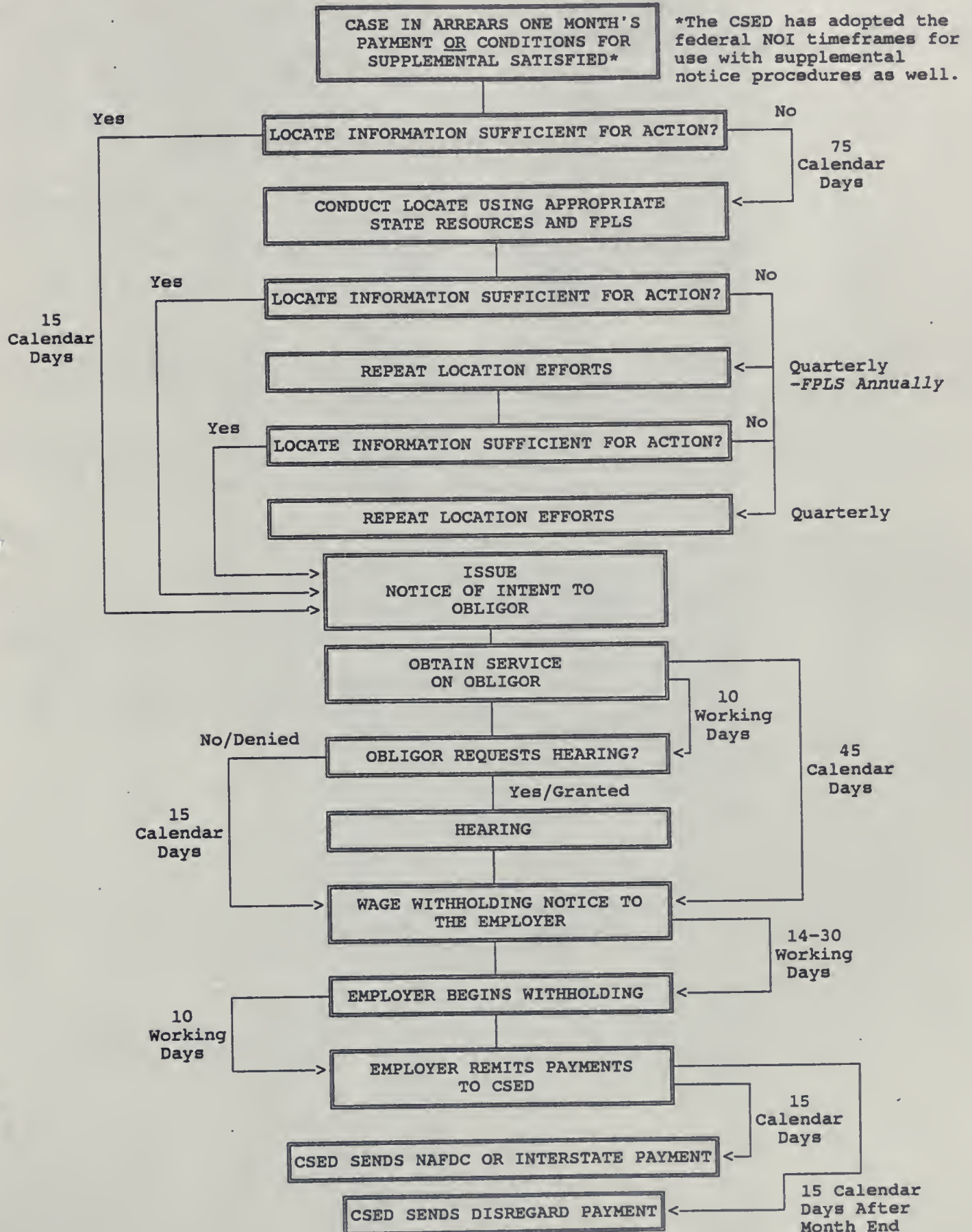
.Caseworker/
Typist

7. Substitutes form OCSE-20 for retained copy in file.

a. If disapproved, notes in case record and forwards the case to the Regional Supervisor for review and possible closure.

b. If approved and signed, notes in case record and monitors for collection action.

INCOME WITHHOLDING THROUGH NOTICE PROCESS



INCOME WITHHOLDING

Initiated
Withholding

- Issue notice within 15 calendar days of delinquency. [CFR 303.100(c)(2)]
- Delinquency is defined as arrearages greater than or equal to one month's support which accumulated after entry of a support order. [CFR 303.100(c)(1)]
- Issue Order To Withhold Income within 45 calendar days of service in contested actions. [CFR 303.100(e)]
- Issue Order To Withhold Income within 15 calendar days of the end of the due process time period in an uncontested delinquency income withholding action. [CFR 303.100(f)(3)]
- note: for audit purposes, the above time frames assume that the Obligor has a payor.

Employer
Responsibilities

- Employer must implement withholding no later than the first pay period that occurs after 14 working days after the Order to Withhold is mailed. [CFR 303.100(f)(1)(ix)]
- Employer must send withholding within 10 working days after the Obligor is paid and report the date on which the amount was withheld from the Obligor's wages. [CFR 303.100(f)(1)(ii)]

DISTRIBUTION
(Other than for
tax offset)

- 15 calendar days to send payment to NAFDC family. [CFR 302.32(f)(1)&(3)(i)&(ii)]
- 15 calendar days after the end of the month to send disregard payment of \$50 or, if less than \$50, amount received. [CFR 302.32(f)(2)(i)]
- note: CSRD standards are stricter than federal standards, for payments greater than or equal to \$50 received before the end of the month.

Department of Public Health and
Human Services

section:
CRIMINAL ENFORCEMENT

CHILD SUPPORT ENFORCEMENT

subject:
FEDERAL CRIMINAL PROSECUTION

SUPERSEDES: [new section]

REFERENCE: Public Law 102-521, 106 Stat. 3403

POLICY: The CSED may refer cases to the U.S. Attorney's Office (USAO) for criminal prosecution of violations of the "Child Support Recovery Act of 1992." This statute creates a new federal crime for the willful nonpayment of child support.

A first offense is a misdemeanor, punishable by not more than six months imprisonment and/or a fine of \$5,000.00. A second offense is punishable by not more than two years imprisonment and/or a fine of up to \$250,000.00. Restitution of past-due child support is also required upon conviction.

This is a remedy which will be appropriate only in the most extreme and egregious cases; it is not suitable for the majority of child support cases. All referrals to the U.S. Attorney's Office must come from the CSED.

CRITERIA FOR REFERRAL:

1. There must be an active IV-D case, and there should be a current support order. This remedy will not be used for arrears only cases unless the Regional Manager can show a compelling reason for pursuing the case criminally.
2. One parent resides in Montana, the other must reside in another state. Cases where the absent parent resides in a foreign country cannot be referred.
3. Support must be past due for more than one

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Prosecution

year OR for an amount greater than \$5,000.00.

4. There must be evidence to prove "willful non-support." This is a "facts and circumstances" decision. For example, evidence that the obligor parent has concealed assets or their location, used false identification, failed to report changes in employment, relocated to avoid paying support may provide proof. Some of this evidence may be contained in case notes. Please consult the CSED Regional Attorney about possible evidence which may prove "willful non-support."
5. There must be exhaustion of appropriate IV-D remedies. Every remedy available to the CSED need not be exhausted, but the "appropriate" remedies should be tried, and their failures noted. It is not necessary to use URESA/UIFSA remedies unless the responding IV-D agency requires such action to enforce child support.

NOTE: If enforcement was unsuccessful due to the non-cooperation of the responding IV-D agency, steps to notify the Region VIII OCSE Representative should be taken. Please consult the Regional Manager if this has occurred.

At the present time, the Billings Regional CSED Staff Attorney is the liaison with the U.S. Attorney's Office. When a case is approved for referral, the physical file remains in the Billings office until such time as the U.S. Attorney's Office denies prosecution, or completes prosecution. However, caseworking responsibility remains with the referring caseworker, so the case must not be transferred to the Billings Region.

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Once a case is referred, the CSED will provide the USAO with any updated information. Caseworkers must continue to process the case and monitor for payments. Generally, a payment received after initiation of prosecution will not be sufficient to dismiss any criminal charges, but may make a deferred prosecution attractive.

PROCEDURE:

Responsibility	Action
Caseworker	1. Identifies case appropriate for referral by comparing the criteria for referral with the information in the case. 2. Contacts custodial parent or initiating IV-D agency to verify custodial parent's address and the physical custody of the child(ren). 3. Prepares a narrative, chronological summary of all remedies pursued, and all outcomes. 4. Completes form CS-509.1A, "Checklist for USAO Prosecution." Forwards to Regional Manager and Regional Staff Attorney for approval.
Regional Manager Staff Attorney	5. Reviews file for referral criteria and completion of check list. Signs check list and enters appropriate SEARCHS case note. Forwards to Billings Regional Staff Attorney for final review.
Billings Regional Staff Attorney	6. Billings Regional Staff Attorney reviews criteria for referral and evidence in file, paying particular attention to the evidence available supporting the allegation of willful nonpayment of support. 7. If referral is appropriate, prepares copies of

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Prosecution

appropriate evidentiary documents. Prepares certification letter to the U.S. Attorney's Office and enters appropriate SEARCHS case note.

8. Refers file to U.S. Attorney's Office. Notifies custodian and originating region of the referral. Responds to information requests by the U.S. Attorney's Office.

Caseworker

9. Monitors and responds to any request made by any responding jurisdiction in an interstate matter. Monitors for payment, or any other contact by obligor. Provides updated information, as received, to the Billings Regional Staff Attorney for any necessary action by the U.S. Attorney's Office.

section: Criminal Enforcement

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ProsecutionMONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

CHECKLIST FOR USAO PROSECUTION

REGIONAL OFFICE _____ DATE _____

OBLIGOR _____ OBLIGEE _____

CASEWORKER _____

The information below supports a referral to the U.S. Attorney's Office for criminal prosecution under the "Child Support Recovery Act of 1992:"

- _____ Signed application for CSED services or assignment of rights.
- _____ Evidence that the absent parent owes at least \$5,000.00 in support arrearages or is one year delinquent.
- _____ Copy of most recent support order, whether initial or modified.
- _____ Last address verified, date verified, method of verification.
- _____ Administrative enforcement remedies have been utilized where appropriate and have been unsuccessful, including federal and state tax refund intercepts and IRS full collection.
- _____ For absent parents residing in another state, the required interstate enforcement remedies have been utilized and the responding state has been unsuccessful.
- _____ Custodial parent has been contacted within the past 30 days to verify that no payments have been received and that he/she still maintains physical custody of the child(ren).
- _____ Fiscal record showing history of unpaid child support has been reviewed for accuracy and a complete debt computation has been printed.
- _____ Employment/unemployment history of obligor is detailed.
- _____ Information of obligor's property ownership.
- _____ Obligor's credit report, including credit cards.
- _____ Evidence of any concealment of assets by obligor.
- _____ Information on all assets, including contacts from any party, title changes, 1099 information.
- _____ Evidence of obligor's relocation to avoid payment of child support.
- _____ Outcome of any previous criminal actions against the obligor.
- _____ Any "lifestyle" information that tends to show a pattern of flight to avoid payment.
- _____ Information regarding the obligor's physical custody of the child(ren).
- _____ Any information regarding child(ren)'s disability or special needs, if any.

REGIONAL MANAGER_____
REGIONAL STAFF ATTORNEY

CS-509.1A

October 17, 1995

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Department of Public Health and
Human Services

section:
CIVIL ENFORCEMENT ADMINISTRATIVE

CHILD SUPPORT ENFORCEMENT

subject:
Income Withholding Overview

SUPERSEDES: CS 510.1, Income Withholding Overview, November 11, 1994.

REFERENCE: MCA 40-5-402, 40-5-403, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417.

POLICY: Definitions. For purposes of administrative income withholding (sections CS 510) the following definitions apply:

(1) Alternative arrangement--signed and secured written agreement for payment of support exempting the obligor from immediate income withholding, approved by the CSED or the district court.

(2) Debt--support debt.

(3) Delinquency--any amount of support owed under a support order, which remains unpaid at least 8 working days after the last day of the month in which payment was due.

(4) Earned income--income that is the result of personal services performed by the obligor, and that meets other federal standards. Earned income is subject to federal withholding limits. Note that in addition to wages, salaries, and other regular-amount earnings, most commissions, including commissions paid to automobile salesmen, may be the result of personal services and may, depending on other factors, qualify as earned income for purposes of withholding.

(5) Good cause--a written determination by the court or administrative agency that immediate income withholding would not be in the best interests of the child.

(6) Income--any periodic payment to the obligor, regardless of source, including earnings and wages, contract proceeds, commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and rent monies. Note that income includes Montana PERS and TRS retirement funds. Income does not include (a) amounts required by law to be withheld from the payment (taxes, social security) or (b) amounts exempted by law from attachment (federal work study wages, for example).

(7) Intervening agreement or court order--an agreement or order attempting to alter the amount that may be withheld under administrative income

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subject: Income Withholding
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withholding (for example, a court order specifying a monthly withholding amount for arrears).

(8) Judgment--final determination by a tribunal affirming the obligor's legal duty to pay a specified sum of money. Once entered by the tribunal, the amount of a judgment may not be contested.

(9) Obligee--the person to whom a support obligation is owed, or a public agency to which a person has assigned support rights.

(10) Payor--any payor of income to the obligor (person, firm, corporation, association, employer, trustee, state agency, or political subdivision, or any agent of these) who is subject to the jurisdiction of the Montana courts, including employers.

(11) Spousal support--maintenance to be paid, separate from child support, to a spouse or former spouse of the obligor.

(12) Support debt--amount owed by the obligor for support arrears plus any other past due support-related charges, including fees, fines, costs, or penalties.

(13) Support order--court or administrative order providing for periodic payment of funds for child support, or for child support and spousal support. May include order for health and medical needs, child care, education, recreation, clothing, transportation, and costs related to the needs of the child.

(14) Unearned income--income that is not the result of personal services, for example, rent monies.

(15) Withholding notice--unless more clearly specified by context, a Notice of Intent to Withhold Income or a Supplemental Notice of Intent to Withhold.

(16) Withholding order--unless more clearly specified by context, an Order to Withhold Income or an Order to Modify/Terminate Withholding.

(this space reserved for additional definitions)

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subject: Income Withholding
Overview

General Requirements. The CSED will seek to implement administrative income withholding in all cases where the CSED is enforcing a support obligation, and will initiate withholding as soon as (1) the CSED locates and obtains jurisdiction over a payor of income and (2) one or more of the conditions for initiating withholding (below) are met. In all cases where withholding is not possible the CSED will monitor the case, and will initiate withholding as soon as circumstances change to allow it. In cases where withholding is in place the CSED will continue to monitor the case to identify modifications to withholding or additional payors of income.

Conditions for Initiating Income Withholding. The CSED provides four types of income withholding services, each defined by the conditions under which it must be initiated:

- (1) Delinquency Income Withholding--The obligor owes any unpaid support 8 working days after the last day of the month in which payment was due.
- (2) Immediate Income Withholding--The Montana support order was issued or modified after January 1, 1990 (or the out-of-state order was registered in Montana after October 1, 1991), and no exemption from withholding has been granted.
- (3) Violation Income Withholding--The obligor is in violation of the terms of an alternative arrangement exempting him or her from immediate income withholding, and the obligee requests income withholding.
- (4) Voluntary Income Withholding--The obligor requests income withholding.

Income Withholding and Obligor Benefits. Some types of non-wage benefits paid to obligors are available for CSED income withholding, while others are exempted from withholding by federal or state law. Generally, benefits based on past employment

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(social security disability, military retirement, retirement or disability payments administered by the state of Montana, workers' compensation) are subject to withholding, and benefits based on financial condition (SSI, TANF) are not. Also, railroad benefits usually are not subject to withholding. In cases concerning withholding from obligor benefits, consult the Benefits Table at the beginning of section CS 200; if questions remain, consult your CSED staff attorney.

Operation of Income Withholding. Administrative income withholding operates as follows:

1. Notice to Obligor. The obligor becomes aware his or her income is subject to withholding by the CSED. (Under "immediate" withholding the obligor is presumed to be aware, because the support order itself must contain a requirement for income withholding. Under "delinquency" withholding the obligor receives a letter of delinquency (if there has been no previous delinquency in the case), a written notice, or both; if a written notice is used, a withholding order for current support is issued at the same time. Under "violation" withholding the obligor receives a written notice prior to withholding. Under "voluntary" withholding the obligor signs an agreement.)
2. Curing Delinquency. (This step for "delinquency" withholding only.) If a letter of delinquency is issued, the obligor has a one-time opportunity to cure the delinquency and avoid withholding by immediately paying the debt.
3. Contested Case. (This step for "delinquency" or "violation" withholding only.) The obligor has an opportunity to contest the noticed withholding by requesting a hearing. Following the hearing the obligor has an opportunity to appeal the decision of the CSED hearing officer by requesting judicial review in district court.

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subject: Income Withholding
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4. Order to Payor. The CSED directs the payor of income to withhold a certain amount from the obligor's income each month and to deliver the amount to the CSED. The CSED also similarly directs all other and future payors of income.
5. Withholding Modifications. The CSED modifies monthly withholding as necessary to respond to changes in the current support obligation or the total support debt. "Supplemental" notice to the obligor may or may not be required, depending on why the withholding must be modified.
6. Hardship Adjustments. (This step may occur at any time after step 1.) The CSED reviews any request by the obligor to adjust withholding based on financial "hardship," makes a determination, and modifies the withholding amount for support debt if appropriate.
7. Termination of Withholding. The CSED directs the payor of income to terminate withholding only when (1) the case involving the obligor is closed or (2) there is no longer a support obligation and the support debt is paid in full.

Withholding Amounts. The CSED sets the monthly amount to be withheld for support debt at 1/24th of the total support debt, or 25% of the obligor's income, whichever is greater. If the obligor can show that withholding of this amount, in addition to any current support, will result in substantial hardship, the CSED may agree to a lesser monthly amount for support debt (withholding for current support must remain at the level of the existing support obligation). The payor may withhold an additional \$5 per month per obligor for administrative costs.

The federal Consumer Credit Protection Act further limits withholding of "earned" income (see definition) as follows: Except as noted below, the total amount withheld each month (current support plus support debt plus fees) may not exceed 50% of

section: CIVIL ENFORCEMENT
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the obligor's net earned income. The payor is responsible for adjusting the withheld amount to comply with this restriction. "Unearned" income is not subject to a maximum amount.

EXCEPTION: Withholding up to 65%. In certain situations the CSED is authorized to withhold up to 65% of net earnings, but generally does not use this authority except in very unusual circumstances (for example, withholding at 50% will not cover current support, and the CSED is aware the obligor has other sources of income). Consult your staff attorney regarding application of a higher limit in a particular case.

Service of Withholding Orders. The CSED serves an Order to Withhold Income (OWI) to initiate income withholding; it serves an Order to Modify/Terminate Withholding (OM/TW) to adjust withholding that is already in place. Withholding orders are served by certified mail, return receipt requested, by sheriff's or private process service, or by acknowledgment. When the OM/TW is used to terminate withholding, it may be served by regular mail.

Rights of the Obligee. The obligee receives a copy of the withholding order to the payor and, if applicable, the withholding notice to the obligor. The obligee may not contest (request a hearing on) the withholding, but may contact the CSED with additional relevant information in a withholding action.

Spousal Support. In cases where the CSED is enforcing spousal support as well as child support, the CSED may initiate immediate and delinquency withholding for spousal support as appropriate.

Jurisdiction. It is not necessary for the CSED to have personal jurisdiction over the obligor to conduct a withholding action, but it must have personal jurisdiction over the payor. The CSED assumes jurisdiction to enforce income withholding in cases where either the obligor or the payor is out of state when (1) the CSED can serve the notice

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ADMINISTRATIVE

subject: Income Withholding
Overview

(if required) upon the obligor personally or by certified mail, and (2) the payor of income (a) is located in Montana, (b) is out of state but does business in Montana, or • is located in a state that has enacted the direct withholding provision of the Uniform Interstate Family Support Act (UIFSA) (see section CS 510.20). If the CSED cannot obtain jurisdiction over the payor, it must use the interstate referral process to take withholding action (see section 510.20).

Multiple Payors, Multiple Cases, Multiple Obligees. Where an obligor has more than one payor, the CSED may apportion the total amount to be withheld among some or all of the payors, or may direct withholding of the full amount by one or more of the payors. (In "notice" situations, only one withholding notice to the obligor is required.) In determining appropriate combinations the CSED considers (1) the obligor's level of income from each payor (and the effect of the 50% limit), and (2) the expected regularity of income from each payor. In cases of multiple payors, the risk of overwithholding (when more than one payor withholds the full amount, or an occasional payor's contribution causes an overage for the month) must be weighed against the risk of underwithholding (when income from an "apportioned" payor ceases, or income from an occasional payor is foregone).

Where an obligor's income is subject to withholding in two or more separate cases, the CSED will issue separate withholding notices. The CSED may also issue separate withholding orders to the payor, or may issue a single withholding order for the combined current support obligations and for payment on the combined total support debt. Use of a single withholding order in this situation requires certain caseworker adjustments to SEARCHS (to maintain accurate case notes for all cases) and to the related word processing (to generate an accurate document). Also, the CSED must adapt the information sent to the obligee about the withholding order to protect the confidentiality of the obligor with respect to the other cases included in the order.

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subject: Income Withholding
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In single cases involving more than one obligee the CSED may issue a separate withholding notice for each obligee, or, depending on the circumstances of the case, it may choose to issue a single, combined withholding notice for all obligees. Separate notices will reflect only the withholding connected with the particular obligee; combined notices must be adapted, with the assistance of the CSED staff attorney, to show the total proposed withholding for all obligees. In all cases with multiple obligees the CSED issues a single withholding order to the payor.

PROCEDURES

Responsibility

ACTION

Caseworker

1. For all cases in which the CSED is enforcing a support obligation or payment of a support debt, and in which income withholding has not been initiated (or has been initiated and terminated), determines whether any of the "Conditions for Initiating Withholding" given earlier in this section (see POLICY) applies.

- a. In cases where the obligor's income may be subject to administrative income withholding, follows procedures in section CS 510.3, 510.4, 510.11, or 510.15, as appropriate. Prepares, obtains supervisor's approval of, and serves on payor form CS-510.8A, Order to Withhold Income (see POLICY for amounts in order and method of service). Sends copy to obligor and obligee.

IMPORTANT: Checks SEARCHS and case file for any reason to protect address or place of employment of obligor. If reason found, removes obligor's address, and name and address of employer, from copy sent to obligee.

- b. In cases where withholding cannot be initiated, monitors the case for any change in circumstances that would allow

section: CIVIL ENFORCEMENT
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subject: Income Withholding
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withholding action.

2. For all cases in which withholding has been initiated, determines whether adjustment in withholding (amount or payor) is appropriate based on procedures in sections CS 510.3, 510.4, 510.5, or 510.10. If so, prepares, obtains supervisor's approval of, and executes withholding order as in step 2a, 2b, or 2c below; sends copy to obligor and obligee.

IMPORTANT: Checks SEARCHS and case file for any reason to protect address or place of employment of obligor. If reason found, removes obligor's address, and name and address of employer, from copy sent to obligee.

- a. Issues and serves on payor form CS-510.9A, Order to **Modify** Withholding (see POLICY for amounts in order and method of service), if
 - change in withholding is appropriate following amendment of NOI, resolution of NOI, or granting of stay in section CS 510.3,
 - change in withholding is appropriate based on voluntary authorization executed in section CS 510.4,
 - change in withholding is appropriate based on conditions listed (and, if required, resolution of SNOI) in section CS 510.10, or
 - hardship adjustment is granted, or previous adjustment ceases, under procedures in section CS 510.5.
- b. Issues and serves on payor form CS-510.9A, Order to **Terminate** Withholding (see POLICY for method of service), if
 - termination of withholding is appropriate following resolution or dismissal of NOI, or granting of stay, in section CS 510.3,

section: CIVIL ENFORCEMENT
ADMINISTRATIVE

subject: Income Withholding
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- the CSED loses its authority to collect support, and any support debt due the CSED is paid in full, or
 - the support obligation is terminated and any support debt due or enforceable by the CSED is paid in full.
- c. If obligor changes employment or new payor is identified, issues and serves on new payor form CS-510.8A, Order to Withhold Income (see POLICY for amounts in order and method of service). (At caseworker's option, also sends Order to Terminate Withholding to payor no longer providing income to obligor.)

Department of Public Health and
Human Services

section:
CIVIL ENFORCEMENT ADMINISTRATIVE

CHILD SUPPORT ENFORCEMENT

subject:
Notice of Intent to Withhold
Income

SUPERSEDES: CS 510.3, "Notice of Intent to Withhold Income,"
November 11, 1994

REFERENCE: 45 CFR 303.100; MCA 40-5-412, 40-5-413, 40-5-414,
40-5-416.

POLICY: Conditions for Delinquency Income Withholding. For
support orders not subject to immediate income
withholding the CSED must initiate income
withholding in all cases where the obligor owes any
amount of unpaid support on the 8th working day
after the last day of the month in which payment
was due. The CSED must notify the obligor of its
intent to withhold income for current support (if
there is a current support obligation) and provide
8 working days to cure the delinquency. If the
obligor fails to cure the delinquency, the CSED

- issues an Order to Withhold Income for any
current support owed, and simultaneously
- serves the obligor with notice of the CSED's
withholding action and its intent to further
withhold income for payment of support debt.

Withholding initiated according to this method is
referred to as "delinquency" income withholding.

The income of the obligor is subject to delinquency
withholding beginning 8 working days after the end
of the month in which any amount of support is due
but is not paid in a IV-D case. (Delinquencies
paid off before the CSED opened a IV-D case do not
qualify the case for delinquency withholding.)
Withholding remains in effect as long as the
obligor owes an unpaid support debt or a current
support obligation.

NOTE: Support orders **not** subject to immediate
income withholding (and therefore appropriate for
delinquency withholding if the above conditions are
met) are orders

- (1) Issued in Montana on or before January 1, 1990
- (2) Issued in another state and not registered in
Montana, or registered in Montana on or before
October 1, 1991
- (3) Exempted from immediate withholding by good-
cause determination or by alternative

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subject: Notice of Intent to
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arrangement. (See section CS 510.11 for further information on initiating withholding in cases of alternative arrangement.)

Previous Non-IV-D Income Deduction. In cases where a district court initiated income deduction procedures before CSED services commenced (or recommenced), the caseworker should consult the CSED staff attorney concerning appropriate CSED actions. A CSED withholding notice or order may or may not be required to enforce withholding, depending on the wording of the court-issued documents and on the current withholding activity in the case.

Opportunity to Cure Delinquency. The CSED issues a one time only letter of delinquency to the obligor which allows 8 working days after issuance of the letter to cure the delinquency and avoid income withholding. If the obligor fails to cure the delinquency within 8 working days after issuance of the letter of delinquency, or if the obligor cures the first delinquency but a subsequent delinquency occurs, the CSED issues an Order to Withhold Income for current support only, and simultaneously proceeds to formally issue a Notice of Intent to Withhold Income (NOI).

Use of Notice. The CSED issues a NOI to inform the obligor of the issuance of the Order to Withhold Income to collect current support, and that the CSED intends to take an additional withholding action. This notice specifies the support debt owed and the portions of the obligor's income that will be withheld each month to pay current support and support debt; it also offers the obligor a chance to dispute any mistakes of fact. The NOI is accompanied by a Debt Computation Worksheet (Debt Comp) reflecting the obligor's payments and monthly obligations beginning with the date of accrual of the oldest debt. (Individual components of debts already entered as judgments, or of debts specified in the support order itself, need not be listed separately; the date of entry of the judgment or support order becomes the accrual date for the individual debts it contains.)

section: CIVIL ENFORCEMENT
ADMINISTRATIVE

subject: Notice of Intent to
Withhold Income

Subsequent withholding may be adjusted to reflect changes in current support, support debt, or both, through the use of a supplemental withholding notice (see section CS 510.10).

EXCEPTION: Regained Withholding Authority. If all the accounts in a case, including arrears, are closed, the CSED loses its authority to withhold income in the case. **In this situation, if the case reopens, the CSED must issue a letter of delinquency** to begin withholding under its regained authority. (The CSED is not required to issue a letter of delinquency if one was sent prior to case closure.) The letter of delinquency must be based on a delinquency at the time of reopening. (If immediate withholding applies at the time of reopening, or if a letter of delinquency was sent prior to case closure, a new NOI is not necessary to implement income withholding for current support.)

EXAMPLE 1: The CSED initiates delinquency withholding in a non-public assistance case with a pre-1990 support order. After one year the obligee discontinues CSED services with no public assistance arrears owing. Later, the obligee reopens the case: the order has not been modified, but there is a delinquency at the time of reopening. **No letter of delinquency was previously sent.** The CSED re-initiates withholding via a letter of delinquency, subsequent withholding order for current support, and NOI if letter of delinquency does not result in full payment of the support debt.

EXAMPLE 2: The CSED initiates delinquency withholding in a non-public assistance case with a pre-1990 support order. After one year the obligee discontinues CSED services with no public assistance arrears owing. Later, the obligee reopens the case: the order has not been modified, but there is a delinquency at the time of reopening. **A letter of delinquency was previously sent, prior to case closure.** The CSED re-initiates withholding via a withholding order for current support and an NOI.

section: CIVIL ENFORCEMENT
ADMINISTRATIVE

subject: Notice of Intent to
Withhold Income

Delinquency Withholding in Arrears-Only Cases. In arrears-only cases not subject to immediate income withholding the CSED will initiate delinquency withholding as described above--regardless of whether the obligor still owes current support. However, no withholding order is sent out prior to resolution of the NOI.

Delinquency Withholding for Current Support Only. Payment of a delinquency after the NOI is served does not remove the requirement for income withholding under this section. In cases where the NOI has been served, but delinquency withholding has not yet begun, and the obligor pays some or all of the noticed support debt, the CSED will continue income withholding for current support and any remaining support debt.

Payment of a delinquency after a letter of delinquency is issued, but before the NOI is served, temporarily removes the requirement for income withholding under this section. Upon a subsequent delinquency, the income withholding requirements of this section (immediate issuance of both a withholding order for current support and an NOI, and issuance of a modified withholding order when the NOI is resolved) become applicable.

Spousal Support. The conditions for delinquency withholding described in this section apply to spousal support as well as to child support. If a delinquency in spousal support (with or without a delinquency in child support) occurs in a case the CSED is enforcing, the CSED must initiate withholding for both spousal support and child support.

Service of letter of delinquency. The letter of delinquency may be mailed via regular mail to the obligor. The timeframes for curing a delinquency begin upon the letter's issuance, not upon receipt.

Service of Notice. The CSED must serve the NOI on the obligor by personal service, certified mail, or acknowledgment. If service of the NOI on the obligor fails, the CSED must make diligent effort

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to locate the obligor and obtain service.

NOTE: Deemed Service of Process. In cases where the obligor cannot be located for service and the existing support or paternity order carries the "deemed service of process" warning required by MCA section 40-5-226(12), by law the CSED's service-of-process requirement is met upon delivery of the NOI by regular mail to the obligor's last known address reported to the CSED. Generally this set of circumstances will occur only when the NOI is being issued under the procedures for violation income withholding in section CS 510.11.

Bases for Contesting Withholding. Upon receipt of a NOI the obligor may contest the proposed withholding by requesting a hearing on the basis of a mistake of fact, which includes a mistake

- (1) Concerning the obligor's identity
- (2) Concerning the existence of the support obligation
- (3) Concerning the amount of current support to be paid
- (4) In the determination that support is delinquent
- (5) In computation of delinquent support amounts owed.

Withholding Pending a Hearing. Except as noted below, if a hearing on the NOI is requested, any withholding ordered for current support remains in place. The CSED will modify the withholding as necessary after the hearing to reflect the correct current support and support debt amounts.

EXCEPTION: Upon a showing of a probable mistake of fact, the ALJ may order a stay (discontinuation), pending hearing, of any withholding already in place. The obligor must request the stay in writing.

Delinquency Withholding Superior to Other Agreements or Findings. Intervening agreements or court orders establishing a schedule for payment of support debt do not prevent the CSED from initiating delinquency income withholding. Also,

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the CSED must initiate delinquency withholding in cases where the obligor is exempted from immediate withholding (see "Conditions..." earlier in this section) if a delinquency is found.

Availability of Income Source. Except as noted below, when a delinquency has been identified but the CSED has not located an income source, or the CSED does not have jurisdiction over a located income source, an NOI is not appropriate.

EXCEPTION 1: The CSED **may** proceed with the withholding notice, or any appropriate letter of delinquency, before an income source is available to the CSED if desirable for enforcement of the case in some other way. For example, the support debt described in the notice may be the basis for a support lien, or, the letter of delinquency may be valuable in securing the attention and participation of a particular obligor at case opening.

EXCEPTION 2: At the discretion of the regions, the CSED may also proceed with an "early" NOI or any appropriate letter of delinquency if that will allow a caseworker to better manage his or her caseload. For example, the caseworker may anticipate problems in being able to complete a particular NOI package within the time allowed because of heavy caseload demands; or, the caseworker may be aware that income from an available source (Montana unemployment or workers' compensation benefits, for example) is likely to commence in the near future.

PROCEDURE:
Responsibility

ACTION

- | | |
|------------|--|
| Caseworker | 1. Identifies a case where delinquency income withholding is appropriate. If letter of delinquency has not previously been sent, immediately prepares and sends form CS-510.3B, Letter of Delinquency, to obligor via regular mail. If letter of delinquency has previously been sent in case, proceeds to step 3. |
|------------|--|

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2. Sets tickler for 8 working days after letter of delinquency issued. When time expires, reviews case to determine whether obligor has paid the delinquency. If the delinquency has been paid, takes no further action in this section. If the obligor fails to timely pay the support identified in the letter of delinquency, proceeds to step 3.
3. If source of income is known, proceeds to step 4. If source of income is not known, proceeds with income locate actions; returns to step 4 when source of income is located.
4. Enters appropriate SEARCHS information on NOS screen, setting up declining balances for current support and support debt.
5. Determines appropriate method of serving NOI on obligor. Methods of service include
 - (1) Personal service by sheriff or private process server
 - (2) Certified mail, return receipt requested
 - (3) Acknowledgment of service by obligor.
6. Within 15 calendar days of issuing a letter of delinquency or of identifying a delinquency in a case where a letter of delinquency is not required, simultaneously with any withholding order required in step 7 below, generates necessary documents on SEARCHS, compiles notice package, and issues package for service on obligor. Complete notice package includes
 - (1) Form CS-510.3A, Notice of Intent to Withhold Income (copy; or, if sheriff's service is used, original and one copy--sheriff will return original to the CSED)--must list current support, if applicable; monthly withholding for support debt; and total support debt.
 - (2) Form CS-501.1A, Debt Computation Worksheet (photocopy)--must be attached to notice; must list payments and obligations for each month since accrual

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of oldest unpaid debt (see POLICY for months included in judgments).

- (3) Form CS-405.2, Request for Hearing
- (4) One of the following service documents:
- Form CS-401.3G, Sheriff's Praecipe (original)
 - Form CS-405.1, Acknowledgment of Receipt of Notice and Waiver of Service (if the obligor cooperates)
 - Certified mail, return receipt requested.

NOTE: Doc-Gen Packet. Documents (1), (2), and (3) above may be generated individually or in the SEARCHS NOI packet ("NOI PAC").

The caseworker is responsible for review and verification of the content and accuracy of each document prior to issuance.

NOTE: "Issue" date. For purposes of meeting time frames, "issues package" means provides package to the sheriff or process server, provides package to the obligor, or sends package by certified mail.

NOTE: Service date. A NOI package is considered served or received on one the following dates, according to the type of service:

- (1) Sheriff's or private process service--date listed on sheriff's return or on affidavit of service
- (2) Certified mail--date of delivery listed on the certified mail card returned to the CSED
- (3) Acknowledgment--date listed on the signed Acknowledgment.

7. Simultaneously with issuance of the notice package in step 6, completes and sends to employer form CS-510.8A, Order to Withhold Income, for current support only, according to procedures in section CS 510.1. EXCEPTION:

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When the employer is known but the obligor is unlocated, the withholding order should be sent without regard to any delays in service occurring in step 6.

8. Mails copy of NOI, Debt Comp, and withholding order, if appropriate, to obligee simultaneously with issuance of notice package to obligor. In incoming interstate cases mails obligee copies to the initiating state.

IMPORTANT: Checks SEARCHS and case file for any reason to protect address or place of employment of obligor. If reason found, removes obligor's address, and name and address of employer, from any copies sent in this step.

9. Monitors for successful service of notice package.
 - a. Upon obtaining service, enters date of service on appropriate SEARCHS screen.
 - b. If service fails, attempts to obtain updated address; if found, arranges for service of notice package, and monitors and enters date of service as above. If service cannot be obtained despite diligent efforts to locate obligor, checks existing support or paternity order for basis for deemed service of process (generally found in CSSED orders issued on or after July 1, 1997).
 - i. If no basis exists, continues periodic efforts to locate for service; takes no further action in this section until service is obtained.
 - ii. If basis exists, mails NOI package by regular mail to last known address reported to CSSED. Determines date of deemed service, using presumed delivery by regular mail, and enters on SEARCHS.

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Prepares and retains in case file form CS-405.2, Efforts to Locate for Service, documenting locate attempts and final mailing. Proceeds in this section as if service had been obtained.

In cases where there is a question of whether service has been successful, consults CSED staff attorney.

10. Monitors for return within response period (10 working days following date of service on obligor), and takes action as follows:

NOTE: Hardship Adjustments. A hardship adjustment may be requested at any time in the process (see section CS 510.5), but the procedures in this section will continue to apply, and the time frames are not extended.

- a. If obligor does not timely request a hearing or timely contact the CSED and prove the noticed withholding is not appropriate, or if hearing is denied, proceeds within 15 calendar days of end of response period, as follows:
 - i. If withholding order was sent in step 7 for current support, modifies withholding order to include noticed support debt, according to procedures in section CS 510.1.
 - ii. If no withholding order was sent in step 7, issues withholding order for noticed amounts, according to procedures in section CS 510.1.
- b. If obligor timely contacts the CSED and proves delinquency withholding is not appropriate,
 - if hearing has been requested, prepares form CS-401.3F, Motion and Order to Dismiss Administrative

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Notice, forwards to Office of the Administrative Law Judge for approval, and notes withdrawal of the withholding notice in the case record.

- if no hearing has been requested, notes withdrawal of the withholding notice in the case record.
- terminates any withholding orders issued as a result of a letter of delinquency.

In questionable cases, consults supervisor or CSED staff attorney concerning further action.

NOTE: If the obligor proves that delinquency withholding is not appropriate, but a subsequent delinquency later occurs, the CSED must begin the delinquency withholding process with issuance of a new letter of delinquency, and then proceed with step 2 above.

- c. If obligor timely contacts the CSED and proves (1) withholding is appropriate for **different amounts** or (2) other non-dollar information listed in the NOI is incorrect, makes efforts to obtain voluntary withholding authorization from obligor (see section CS 510.4). If voluntary agreement is not possible, works with CSED staff attorney to issue amended NOI reflecting corrected information; if necessary, modifies withholding order issued in step 7.

NOTE: Oral Amendment. If it appears the matter will go to hearing despite any agreed change(s), the caseworker should consider whether to amend the NOI in writing or orally at hearing. (If the obligor fails to appear for hearing, however, oral amendment will not be possible.) If the NOI is amended in writing and the case then goes to

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hearing, both the original and amended NOI should be included with the hearing exhibits.

- d. If obligor timely requests a hearing in writing, contacts OALJ to identify withholding issue(s) (current support, existence of delinquency, support debt) for which hearing is granted. If stay of withholding for current support is granted pending hearing, immediately executes form CS-510.9A, Order To Modify/Terminate Withholding. (Typically the order would be for termination of withholding; however, there may be situations where modification of the withholding amount to \$0 would be more appropriate in the case.)

Prepares CSED case for delinquency income withholding and presents at hearing. Proceeds to step 11.

NOTE: Hearing "Requested" A hearing is not "requested" until a written request is actually received by the Office of the Administrative Law Judge (OALJ) (ARM 46.30.601(1)(b)). Any regional office receiving a hearing request should date-stamp and fax the request immediately to the OALJ, and follow the fax with the original, sent by regular mail, for official OALJ records.

11. Upon receiving decision and order from delinquency withholding hearing, proceeds as follows:
 - a. If withholding order was sent in step 7 for current support, modifies or terminates withholding order to reflect hearing decision, according to procedures in section CS 510.1. (If withholding was stayed pending hearing and withholding order sent in step 7 was terminated, proceeds as in step 11b below.)

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- b. If no withholding order was sent in step 7, issues withholding order if necessary to reflect hearing decision, according to procedures in section CS 510.1.

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
CIVIL ENFORCEMENT ADMINISTRATIVE

subject:
Voluntary Withholding
Authorization

SUPERSEDES: CS 510.4, "Voluntary Withholding Authorization,"
November 11, 1994.

REFERENCE: MCA 40-5-412, 40-5-413, 40-5-247; 45 CFR 303.100

POLICY: Purpose and Use of Voluntary Withholding Authorization. The CSED uses a Voluntary Withholding Authorization (VWA) in place of the standard notice and hearing process to document the obligor's agreement to income withholding in the following situations:

- (1) The obligor requests withholding in a case where the CSED has not issued a withholding notice or a withholding order
- (2) The obligor agrees to a withholding action after a withholding notice is issued (agreed amounts may be different from, or the same as, those noticed).

Because the obligor waives any rights to notice or hearing for the amounts specified in the VWA, execution of the document allows the CSED to order the specified withholding immediately. Once the specified withholding is in place, the CSED may then take subsequent notice and hearing actions to change the ordered amounts, if necessary.

The VWA lists the amounts agreed to be withheld from the obligor's income for current support, support debt, or both. If withholding for support debt is included, the VWA also lists the total support debt amount associated with the withholding, and attaches a Debt Computation Worksheet (Debt Comp) showing the period covered by the debt.

Restrictions on Amounts Listed. Both the obligor and the CSED must agree to amounts listed on the VWA. The CSED will agree to VWA amounts only when the amounts meet the following requirements:

- (1) Current Support. Current support amounts must be the amounts in the existing support order. Withholding for current support may be omitted

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from the VWA only if there is no current support obligation.

NOTE: Case Opening and the VWA. If the CSED is processing the VWA simultaneously with case opening, amounts for current support must be correct to the best of the caseworker's immediate knowledge. If the amount of current support is known, it is not necessary to obtain a copy of the support order from the district court before proceeding with the VWA.

- (2) Support Debt. Support debt amounts must be amounts known or proved to the caseworker for the period in question. VWAs entered following a withholding notice must include support debt amounts for the entire period covered by the notice. VWAs issued in the absence of a notice may include support debt amounts for selected periods. In either case the total support debt must accurately reflect payments and obligations for the period specified. Likewise, the monthly withholding amount must be based directly on the total debt listed on the VWA, and calculated according to standard income withholding procedures at 1/24th of that total debt.

NOTE: Fees and Fines. Support debt amounts listed on the VWA may exclude all or part of any fees or fines imposed during those periods if the caseworker determines it is advantageous, and the supervisor approves.

NOTE: Hardship Adjustments. In the case of a request for a hardship adjustment (see section CS 510.5) the VWA must list the withholding amounts that would apply without the adjustment. If an adjustment is granted, the VWA amounts will apply upon termination of the hardship condition.

Advantages of Securing Voluntary Withholding Authorization. The main advantage of securing a voluntary authorization to withhold is the

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avoidance of the administrative cost associated with notice and hearing. A secondary advantage is the earlier receipt of withholding payments (by the family or the state), but if notice and hearing are needed to correct a VWA, the administrative cost often outweighs the advantage of the earlier revenue. The following examples describe situations where VWAs may be desirable:

(1) The CSED has taken no withholding action because--

(a) The CSED is in the process of opening the case.

EXAMPLE: The obligor has recently received case opening information and contacts the CSED to begin withholding immediately. The obligor and caseworker agree on the current support amount, but the obligor claims to have evidence leading to a support debt different from the CSED record amount. The caseworker determines it is probable this evidence is valid, and wishes to take the opportunity to initiate withholding without going through the process described in section CS 510.3. The caseworker executes the VWA, including support debt for the periods where CSED records and the obligor agree. (If the caseworker has reason to believe the evidence for the periods in question is not valid, it may be preferable to follow the procedures in section CS 510.3, since a VWA for an incorrect debt amount would be followed by an SNOI anyway.)

(b) The CSED has no authority (or ability) to initiate withholding.

EXAMPLE: The obligor owes no support debt, and has a support order issued before 1990 and not modified since 1989. The obligor requests withholding for current support for reasons of personal convenience. The caseworker executes the VWA to take advantage of this opportunity for reliable enforcement. [ALTERNATIVE:

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Generally, where the obligor **does** owe a support debt, the CSED will follow the procedures in CS 510.3. However, there may be occasions where the CSED has not been able to locate the obligor or any payor, has not issued a letter or notice under section CS 510.3, and suspects the obligor may resume noncooperation after this contact. If the obligor will agree to current support only, it may be beneficial to obtain withholding for current support while it is available, and attempt an SNOI for the support debt at a later date.]

- (2) The CSED has issued a withholding notice or letter of delinquency and is preparing to issue the associated withholding order to the payor.

EXAMPLE: The obligor contacts the CSED in response to a notice or letter of delinquency for the period January 1991 to present. The obligor proves the debt for March through May of 1992 is incorrect, but agrees with current support and with the debt as shown on the Debt Comp for all other months in the period. The caseworker executes a VWA based on the complete (1/91 to present) corrected debt and, if a hearing has been requested, sends a copy of the executed VWA to the Office of the Administrative Law Judge (OALJ).

NOTE: Partial Agreement after Notice. In the above example if the obligor disagrees with the noticed debt for March through May of 1992, but cannot prove to the caseworker's satisfaction the amount is incorrect, it is not appropriate for the caseworker to enter into a "partial" VWA, even if current support and the support debt for all other months are agreed. The SNOI process that will follow the VWA will be no more desirable than the original notice process the caseworker is trying to avoid. (Exceptions may apply in cases where the caseworker anticipates great

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difficulty in obtaining service.)

Informing the Oblige. When the CSED executes a VWA following a withholding notice, it must inform the obligee of any new amounts.

Adapting the VWA. The caseworker may not, in the interest of encouraging voluntary authorization, change or delete any of the federally or statutorily required language in the VWA form (issuing orders to future employers, continuing withholding as long as the CSED enforces the support order, etc.). Likewise, standard amounts may not be changed or omitted from the authorization (allowable cost to the employer for income withholding, maximum percentages of net income withholdable, etc.). On questions of allowable adaptations, consult your CSED staff attorney.

Time Frames for Voluntary Withholding Authorization. In notice cases where VWA amounts differ from noticed amounts, the VWA--to be effective--must be executed before the withholding order based on the noticed amounts is issued, and before any hearing based on the noticed amounts is held. If no hearing is requested the CSED **may** issue a withholding order for the noticed amounts as early as the first day after the end of the notice response period, and **must** issue the order within 15 calendar days after the end of the response period.

NOTE: VWA Discussions and Mandatory Response Time. It is important that the caseworker explain to the obligor that discussions concerning a VWA do not extend (a) the time available to the obligor for requesting a hearing, or (b) the time available to the CSED for issuing a withholding order. If the CSED receives neither a timely hearing request nor a timely VWA, it will be **required** to issue a withholding order based only on the noticed amounts. Therefore, it may be in the obligor's best interest to request a hearing, even when a voluntary agreement is expected. (The request can

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be withdrawn at any time, but the time available for discussions will now run up until the hearing date, and the hearing option will still be available if VWA discussions break down.)

In notice cases where there is no hearing request but a voluntary agreement appears likely, the caseworker may wish to wait as long as possible (up to 15 calendar days following the end of the response period) before issuing the withholding order, to allow the maximum opportunity for discussion and agreement.

PROCEDURE:

Responsibility

ACTION

Caseworker

1. Upon identifying a case where voluntary withholding is appropriate (see POLICY, "Purpose and Use" and "Advantages"), discusses requirements and benefits of VWA with obligor; reminds obligor, where applicable, time limit for requesting a hearing will not change.

If obligor agrees--or appears likely to agree --to VWA terms and amounts compatible with CSSED policy restrictions, proceeds to step 2. If not, suspends VWA activities until agreement can be reached; takes next appropriate enforcement action in case.

2. Generates form CS-510.4, Voluntary Withholding Authorization on SEARCHS, and mails to obligor.
 - a. In cases with applicable withholding notice, proceeds to step 3.
 - b. In cases with no applicable withholding notice, monitors case for return of form.
 - i. If letter of delinquency has been issued and VWA is returned before NOI must be issued, or if no letter of delinquency is pending, proceeds to step 4.

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- ii. If letter of delinquency has been issued and VWA is not returned before NOI must be issued, proceeds with NOI as in section CS 510.3, and returns to this section at step 3.

NOTE: In-Person Delivery. The VWA may be hand-delivered to the obligor at the regional office if the obligor requests voluntary withholding in person. In any case the caseworker must complete the form **before** providing it to the obligor for review and signature.

- 3. Notice Cases. Monitors case for return of form. [Optional: Sets additional "VWA due" (or similar) tickler for end of response period.] If VWA is returned, completed, by end of notice response period, proceeds to step 4. If not, checks status of VWA with obligor and takes action as follows.

- a. If no request for hearing has been received, within 15 calendar days after end of response period issues withholding order based on notice.

NOTE: Amended Notice. The caseworker may amend the notice if facts discovered during discussions with the obligor indicate a change is needed; consult your CSED staff attorney concerning amended notices.

- b. If hearing has been requested and voluntary agreement appears unlikely, follows procedures outlined in section CS 510.3 or 510.10 for coordinating withholding order with hearing.
- c. If hearing has been requested but voluntary agreement appears likely, continues to work with obligor during time before hearing date. Proceeds to

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step 4 if agreement reached, advising OALJ of voluntary authorization; follows procedures in section CS 510.3 or 510.10 for coordinating withholding order with hearing if agreement is not possible.

4. Upon receipt of signed and executed VWA from obligor, reviews for completeness, conformance to policy. If acceptable, proceeds to step 5; discontinues any processes pending under section CS 510.3 or 510.10. If not acceptable, informs obligor if possible and resumes any withholding processes pending, observing applicable time frames.
5. Enters appropriate SEARCHS information on NOS screen, setting up declining balance for current support, support debt, or both based on VWA amounts.
6. Mails copy of properly executed VWA to obligee, retaining original for case file. If a hearing was requested, mails copy of VWA to OALJ; sets SEARCHS tickler for 30 days for return of order vacating or dismissing hearing.

IMPORTANT: Checks SEARCHS and case file for any reason to protect address or place of employment of obligor. If reason found, removes obligor's address, and name and address of employer, from any copies sent to obligee.

7. Using VWA amounts, completes and sends to employer form CS-510.8A, Order to Withhold Income, or form CS-510.9A, Order to Modify/Terminate Withholding, according to procedures in section CS 510.1, within the soonest of
 - 15 calendar days after end of notice response period, where notice pending when VWA received,
 - 15 calendar days after receipt of

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- properly executed VWA, or
15 calendar days after date of letter of
delinquency, where letter of delinquency
pending when VWA received.

April 1, 1999

Hardship Bulletin

The CSED uses the following numbers to perform hardship calculations under ARM 46.30.1217, Procedures for Determining Hardship Adjustments. Both the interest rate and the poverty guidelines are updated annually by the federal government. For each update the CSED issues a new Bulletin and updates the appropriate SEARCHS table. Hardship worksheets generated on SEARCHS will pull the most current information automatically.

1. Interest Rate

The average 10-year U.S. Treasury constant maturity rate (the interest rate) for the past calendar year is shown below. This is the rate used on line 14 of the Hardship Adjustment Worksheet (CS-510.5B) to calculate income attributable to non-performing assets.

Interest rate for calendar year 1998
(for calculations performed in 1999): 5.26 %

2. Poverty Guidelines

The U.S. Poverty Guidelines currently in effect (published March 18, 1999) are shown below. These are the amounts used on line 26 of the Hardship Adjustment Worksheet (CS-510.5B) to represent the minimum subsistence level for the obligor's household size.

<u>Family Size</u>	<u>Monthly Amount</u>	<u>Yearly Amount</u>
1	\$687	\$8,240
2	\$922	\$11,060
3	\$1,157	\$13,880
4	\$1,392	\$16,700
5	\$1,627	\$19,520
6	\$1,862	\$22,340
7	\$2,097	\$25,160
8	\$2,332	\$27,980

For each additional family member above 8, add \$235 (monthly) or \$2,820 (yearly).

INSTRUCTIONS FOR MANUAL MAINTENANCE: Insert this Bulletin at the beginning of section CS 510.5 (Hardship Adjustments); remove and destroy the existing Hardship Bulletin dated May 23, 1998; update the Table of Contents (page 6).

Department of Revenue

section:

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subject:

Hardship Adjustments

CHILD SUPPORT ENFORCEMENT

POLICY:

Under certain circumstances, the amount withholdable for payment of arrears may be reduced due to a financial hardship upon the obligor or the obligor's legal dependents. Current and future support payments may not be adjusted because of hardship. If current and future support is being collected by the CSEB, the amount withheld as payment on arrears may never be less than \$1.00 nor more than 1/24th of the total arrearage (unless, in the latter case, an agreement is made with the obligor to do so). Income withholding Rules allow for a minimum payment of \$25.00 per month if the obligor's current support obligation never existed, has terminated, or is not being enforced by the CSEB.

A claim for a hardship adjustment may be asserted by the obligor at any time before or after the commencement of income withholding. However, only one request for hardship review is available for each claimed incident of hardship. A new determination should not be granted except upon a showing of new circumstances: that is, not existing at the time of the previous determination (ARM 42.6.314). The determination of the hardship adjustment is independent of the income withholding process and consideration of hardship shall not delay, prevent, or stay implementation of income withholding. Unless or until a hardship adjustment is made, the notice, hearing, and withholding process will continue unabated.

DEFINITION OF HARDSHIP

For the purposes of adjustment, hardship is defined as: extraordinary costs or expenses for special medical, dental, and mental health needs incurred by the obligor or the obligor's legal dependents to the extent that such costs are actually being paid by the obligor and are not reimbursed by insurance. Substantial hardship shall also include special costs or expenses which are directly related to the

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obligor's ability to earn income available for withholding and which, if not paid by the obligor, would result in a major loss of income. Further, a hardship adjustment may be considered if family income minimally meets the subsistence level for food, housing, clothing and other necessities as established by the United States Poverty Guideline.

No reduction in payment on arrears is allowed for those obligors not meeting these requirements.

DURATION OF HARDSHIP

The hardship adjustment shall last only for the duration of the hardship upon which the adjustment is based. The adjustment shall cease at the end of the hardship and the withholding amount shall increase automatically to 1/24th of the arrearage amount owing at the time of the most recent service, hearing, or stipulation. The obligor is required to indicate when the hardship is expected to terminate. However, if this date cannot be ascertained from the information provided, before granting a hardship adjustment consult your Regional Supervisor to determine a termination date (e.g., in 3 months, 6 months, 1 year, etc.).

HARDSHIP COMPUTATION

The actual adjustment is based on a comparison of net family income. This is the income of all family members for whom expenses are deducted (obligor plus legal dependents), minus allowable expenses, compared to the US Poverty Index Guideline (PIG) for the appropriate total family size. (The current PIG can be found at Section CS 404.5). The total funds available (Line 26 of form CS-510.5B, "Hardship Adjustment Worksheet"), are then applied to the Hardship Contribution Table (see the following page) to determine if a hardship adjustment is warranted. Percentages are applied to the amount of Line 26 if an adjustment is made.

section:

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subject:

Hardship Adjustments

HARDSHIP CONTRIBUTION TABLE

Obligor's Funds Available (Line 26)	Withholding Percentage	
	Arrears and Current*	Arrears Only**
\$0 - \$200.00	10% plus Current	35%
\$200.01 - \$400.00	25% plus Current	40%
\$400.01 - \$600.00	40% plus Current	45%
\$600.01 or more	50% plus Current	50%

If the current and future support amount is being enforced by the CSED, the arrearage portion of the amount withheld may never be less than \$25.00. It may never be more than 1/24th of the total arrearage amount (unless a written agreement is made with the obligor which allows more to be withheld).

** If the obligor's current and future support obligation never existed, has terminated, or is not being enforced by the CSEB, the amount withheld may never be less than \$25.

INCOME CONVERSION TABLE

If the obligor's wages or other income are paid other than monthly, multiply the amount paid times the factor from the Income Conversion Table to convert it to a monthly amount (in accordance with OCSE-AT-76-5).

<u>How Often Paid</u>	<u>Conversion Factor</u>
weekly	4.345
bi-weekly/every other week	2.173
twice-a-month	2.00

PROCEDURE:

Responsibility

ACTION

HARDSHIP DETERMINATIONS.Caseworker/
Typist

1. Upon receipt of a verbal or written request for a hardship determination from an obligor, mails

section:

CIVIL ENFORCEMENT
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subject:

Hardship Adjustments

(by regular mail) or otherwise delivers a copy of form CS-404.6, "Financial Affidavit", to the obligor (along with form CS-510.5A, hardship determination cover letter, or other explanatory letter if appropriate), retaining a copy of the correspondence for the case record.

2. Upon return of form CS-404.6 and supporting documentation or verification items, completes form CS-510.5B, "Hardship Determination Worksheet" to determine if an adjustment is appropriate.
3. Notifies the obligor of the hardship adjustment determination by completing form CS-510.5C, "Hardship Adjustment Review" and mailing original (by regular mail) or otherwise delivering it to the obligor, retaining a copy in the case record.

NOTE: In AFDC and NAFDC cases, a copy of the CS-510.5B may be sent (on request) so the obligor can see the computations used in making the determination.

4. If the Hardship Adjustment Review is not returned, no further consideration to the hardship claim is given and withholding continues at the full amount required by law.
5. If the Hardship Adjustment Review is returned indicating satisfaction with the hardship determination that an adjustment is appropriate:
 - a. If form CS-510.8A, "Order to Withhold" has not been served on the employer, prepares one using the hardship adjusted amount (see Section CS 510.8) and proceeds to step 10; or,
 - b. If form CS-510.8A, "Order to Withhold has been served on the employer, prepares form CS-510.9, "Order to Modify/Terminate Withholding" (see Section CS 510.9) and proceeds to step 10.

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6. If the CS-510.5C, "Hardship Adjustment Review" is returned indicating dissatisfaction with the hardship determination and further review is requested, forwards the completed forms CS-510.5B and CS-404.6 plus supporting documentation or verification items to the Bureau Chief or his designee.
- .Bureau Chief
or Designee
7. Reviews applicable material to ascertain if the hardship determination is appropriate.
8. Notifies all parties in writing of the final agency decision:
- .Caseworker/
.Typist
9. Upon receipt of the Bureau Chief's review:
- a. If an adjustment is to be made, proceeds as directed in step 5 in accordance with the Bureau Chief's determination.
- b. If the adjustment is denied, continues the income withholding process in the full amount required by law.
12. Whenever a hardship adjustment is made, "diaries" the case for increase of income withholding when the hardship condition terminates.
13. In NAFDC cases, a copy of the CS-510.5C, "Hardship Adjustment Review" should be sent to the applicant if a hardship adjustment is granted.

SEE FOLLOWING PAGES FOR INSTRUCTIONS AND SAMPLES

section:

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ADMINISTRATIVE

subject:

Hardship Adjustments

DEPARTMENT OF REVENUE
INVESTIGATIONS AND ENFORCEMENT DIVISION
CHILD SUPPORT ENFORCEMENT BUREAU

TED SCHWINDEN, GOVERNOR

P.O. BOX 5955

STATE OF MONTANA

HELENA, MONTANA 59604

Date: _____

(1)

(2)

Dear _____

(3)

You have requested a review of your case. The purpose of the review is to determine if you are eligible for a hardship reduction in the amount which must be withheld in satisfaction of your support delinquency. For the review you will be required to complete a financial affidavit in its entirety.

You must provide verification of any and all income (i.e. copies of pay stubs for the past three months). Secondly, you must submit verification of any claimed expenses. For example, if you have an unreimbursed medical expense, you must attach a copy of your bill as well as a statement or receipt indicating the amount of your monthly payment toward this obligation. If you fail to produce such verification, then we must disregard the expense. If you claim expenses which you, your current spouse, or any other legal dependent are jointly obligated to pay, you will also be required to submit the same financial information on the other legal dependent. The decision to grant you a hardship adjustment will be made solely from the information, documentation, and other verification you provide.

The information you submit will be analyzed by the Investigator to determine whether or not you qualify for a hardship adjustment and if so, the amount of the adjustment. You will receive notification of the findings in writing. If you are dissatisfied with the decision, you may request a review of the findings by the Bureau Chief or his designee. That decision will be final.

Unless or until you are granted a hardship adjustment, no changes will be made in the income withholding process. Likewise, a request for review will not prevent or delay the income withholding process.

Please return the financial affidavit with all necessary documentation to this office as soon as possible.

Sincerely,

(4)

Child Support Enforcement Bureau

CS-510.5A
(Rev. 12/88)

AN EQUAL OPPORTUNITY EMPLOYER

section:

CIVIL ENFORCEMENT
ADMINISTRATIVE

subject:

Hardship Adjustments

INSTRUCTIONS:

Responsibility	Call Out Number	ACTION
----------------	-----------------	--------

FORM CS-510.5A, Hardship Determination Cover Letter-- Used, when appropriate, to provide written notification to the obligor that a hardship determination is being considered and to request financial information.

.Caseworker/
Typist

- ① Enter the current date.
- ② Enter the obligor's name and address.
- ③ Enter the Obligor's name.

.Investigator

- ④ Sign your name.

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subject:

Hardship Adjustments

STATE OF MONTANA
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT PROGRAM

Hardship Adjustment Worksheet

Obligor Name: _____ (a) _____ SSN: _____ (b) _____

Obligee Name: _____ (c) _____ Case No: _____ (d) _____

Child(ren)'s Name(s): _____ (e) _____

Is Obligor currently married and residing with spouse? ☐ Yes ☒ No (f)

Number of members within obligor's current household (obligor plus legal dependents): 5

PAY PERIOD CONVERSION TABLE

Weekly: 4.345 Every Two Weeks: 2.173 Twice a month: 2.0

MONTHLY INCOME

1. Gross Wages, Salaries, Tips
2. Interest Received
3. Dividends, Pensions, etc.
4. Spousal and/or Child Support Received
5. Other (specify):

8 _____
 8 _____
 8 _____
 8 _____
 8 _____
 8 _____

h

6. TOTAL INCOME (Sum of Lines 1 - 5)

ASSETS

7. Savings Account Balance(s)
8. Checking Account Balance(s)
9. Stocks, Bonds, etc.
10. Vehicle(s) (Equity Value)
11. Real Estate (Equity Value)
12. Other (specify): _____

(Handwriting practice lines with a bracketed group labeled 'i')

13. TOTAL ASSETS (Sum of Lines 7 - 12)
14. Monthly Value of Assets
(Line 13 divided by 24)

TOTAL INCOME/ASSETS AVAILABLE

15. (Line 6 plus Line 14) \$ (k)

CS-510.5B
(Rev. 12/88)

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MONTHLY DEDUCTIONS

16. Federal Income Tax \$ _____
17. State Income Tax \$ _____
18. Social Security (FICA) \$ _____
19. Mandatory Retirement \$ _____
20. Special Medical and/or
Required Business Expenses
(Explain): _____
21. Spousal and/or Child Support Paid
a. Due for This Case \$ (n)-(a) _____
- b. Other Payments Actually Being Made
(verification of payment mandatory) \$ (n)-(b) _____
22. Other (Explain): _____

TOTAL DEDUCTIONS

23. (Sum of Lines 16 - 22) \$ (p) _____

INCOME ADJUSTED ARREARAGE PAYMENT

24. Net Income Available
(Line 15 minus Line 23) \$ (q) _____
25. Minimum Subsistence Allowance
(See Manual Section 404.5) \$ (r) _____
26. Funds Subject to Hardship Table
(Line 24 minus Line 25) \$ (s) _____
27. MONTHLY ADJUSTED ARREARAGE PAYMENT
(Using Hardship Adjustment Table:
Line 26 X _____ %)
28. Total Arrearage Amount (as of _____)
(As specified on the most recent notice,
stipulation, or hearing order.) \$ (u) _____
29. Maximum Arrearage Withholding Amount
(The smaller of: [Line 28 + 24] or [Line 27]) \$ (v) _____

ADJUSTED TOTAL WITHHOLDING AMOUNT

30. Current Support Obligation \$ (w) _____
31. Total Withholding (Line 30 plus Line 29) \$ (x) _____

Prepared by: (y) _____ Date: (z) _____

section:

CIVIL ENFORCEMENT
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subject:

Hardship Adjustments

INSTRUCTIONS:

Responsibility	Call Out Number	ACTION
----------------	-----------------	--------

FORM CS-510.5B, "HARDSHIP DETERMINATION WORKSHEET"--
Used, based upon information from the CS-404.6A,
"Affidavit" to see if hardship adjustment is
warranted.

- .Investigator
- (a) Enter the name of the obligor.
 - (b) Enter the Social Security Number of the obligor.
 - (c) Enter the name of the obligee.
 - (d) Enter the IV-D case number.
 - (e) Enter the name(s) of the child(ren) for whom support is to be paid.
 - (f) Check to indicate obligor's current marital and residential arrangements.
 - (g) Enter the number of legal dependents in the obligor's current household. If you consider the spouse's income in (h) below, include step children in the obligor's current household; otherwise, just legal dependents. If there is any doubt whether a household member is a legal dependent, consult your CSE staff attorney.
 - (h) Indicate all types of income for legal dependents in the household, stated in monthly terms, Lines 1 through 5, totalling the income on Line 6.
 - (i) Indicate all types of assets for legal dependents in the household in Lines 7 through 12, totalling the assets on Line 13.
 - (j) Enter the monthly value of the assets derived by dividing Line 13 by 24.
 - (k) Enter the total monthly income available (the sum of Line 6 plus Line 14).

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subject:

Hardship Adjustments

- (l) Indicate the normal mandatory deductions from income in Lines 16 through 19. (If unavailable, use US and Montana tax tables to compute.)
- (m) Indicate the amount of payments actually being made for special medical expenses of the obligor or his family or for reasonable business expenses necessary to maintain the obligor's income and briefly explain the nature of these expenses. No credit is to be given if the obligor fails to provide proof of payment.
- (n)(a) Indicate the amount of the current child support and (if appropriate) spousal support due on this case.
- (n)(b) Indicate the amount of any child support and (if applicable) spousal support payments actually being made by the obligor or a legal dependent of the household for other families. No credit is to be given if the obligor fails to provide proof of payment.
- (o) Indicate and explain any other special deductions and/or expenses.
- (p) Enter the sum of Lines 16 through 22.
- (q) Enter the net income available (Line 15 minus Line 23).
- (r) Enter the appropriate subsistence amount for the size of the obligor's household (see Section CS 404.5).
- (s) Enter the total funds subject to the Hardship Contribution Table (Line 24 minus Line 25).
- (t) Determine where the value of Line 26 falls on the Hardship Contribution Table (see page 3 of this Section), indicate the appropriate percentage in the blank provided, multiply that percentage times Line 26, and enter this value on Line 27.

section:

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subject:

Hardship Adjustments

- (u) Enter the total arrearage amount for which the obligor has been noticed on this case and indicate the computation ending date.
- (v) Enter the maximum amount of arrearage withholding that is permissible for this case (the smaller of: the monthly amount specified in the most recent Notice or Agreement (or the amount in Line 28 ÷ 24); or, the amount in Line 27).
- (w) Enter the current child support obligation (if none, enter "-0-") and (if applicable) spousal support obligation(s).
- (x) Enter the total (arrears plus current, if any) withholding amount.
- (y) Sign your name.
- (z) Enter the current date.

section:

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ADMINISTRATIVE

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Hardship Adjustments

STATE OF MONTANA
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT BUREAU

Case Number: 1) Concerning: 2
) (Obligee)
 IN RE THE SUPPORT OBLIGATION OF:)
)
3) 4
 (Obligor)) (Children)

HARDSHIP ADJUSTMENT REVIEW

TO: The Above Named Obligor

A review was conducted to determine your eligibility for a hardship adjustment. The adjustment, if granted, would reduce the amount withheld from your income towards satisfaction of your support delinquency. The results of this review are as follows:

- ☐ You are not eligible for a hardship adjustment. Income withholding will proceed in the maximum required amount.
- ☒ You are eligible for a hardship adjustment. The adjusted amount to be withheld each month towards satisfaction of your support delinquency is the amount of \$ 6. Total withholding will not exceed the amount of \$ 7. This adjustment will terminate automatically on 8, 198 unless, before that date, you request a redetermination of the hardship adjustment. When the adjustment ceases, the amount to be withheld each month thereafter will return to the full amount.

On the bottom of this notice you will find a form which you are required to complete and return to the undersigned Investigator. **NO ADJUSTMENT WILL BE MADE, OR FURTHER REVIEW OF YOUR ELIGIBILITY FOR A HARDSHIP ADJUSTMENT WILL BE CONDUCTED UNTIL THIS FORM IS RECEIVED.**

Dated this _____ day of 9, 19____.10
Investigator

Address: _____

11
Telephone: (406) _____

=====

TO BE COMPLETED BY THE OBLIGOR (Check the appropriate box(es) and return)

☐ The determination shown above is acceptable.☐ The determination shown above is not acceptable.Further review: ☐ is requested. ☐ is not requested.

Date: _____

(Signature)

Case Number: 12CS-510.5C
(Rev. 12/88)

Section:

CIVIL ENFORCEMENT
ADMINISTRATIVE

Subject:

Hardship Adjustments

INSTRUCTIONS:

Responsibility	Call Out Number	ACTION
----------------	-----------------	--------

FORM CS-510.5C, "HARDSHIP ADJUSTMENT REVIEW"--Used to inform the obligor of the outcome of the hardship determination.

Investigator/
Typist

- ① Enter the IV-D case number.
- ② Enter the name of the obligee.
- ③ Enter the name of the obligor.
- ④ Enter the name(s) of the child(ren) for whom child support is to be paid.
- ⑤ Indicate whether the hardship adjustment request is being denied or approved.
- ⑥ Enter the Maximum Withholding Amount (from form CS-510.5B, "Hardship Adjustment Worksheet", Line 29).
- ⑦ Enter the Total Withholding amount (from form CS-510.5B, "Hardship Adjustment Worksheet", Line 31).
- ⑧ Enter the hardship adjustment termination date.
- ⑨ Enter the current date.
- ⑩ Sign your name.
- ⑪ Enter the Regional office address and telephone number.
- ⑫ Enter the IV-D case number.

Department of Public Health and
Human Services

section:
CIVIL ENFORCEMENT ADMINISTRATIVE

CHILD SUPPORT ENFORCEMENT

subject:
Supplemental Notice of
Intent to Withhold

SUPERSEDES: CS 510.10, "Supplemental Notice of Intent to Withhold Income," August 22, 1994.

REFERENCE: MCA 40-5-412, 40-5-413, 40-5-416, 40-5-417.

POLICY: Use of Notice. The Supplemental Notice of Intent to Withhold (SNOI) is used only when there is a withholding order in effect. The SNOI informs the parties that the CSED is proposing a change in the existing income withholding action, and specifies the portions of the obligor's income that will now be withheld to pay current support, support debt, or both. The notice specifies the following three amounts:

- (1) Proposed total withholding for current support
- (2) Proposed total withholding for support debt
- (3) Proposed total unpaid support debt.

It offers the parties a chance to dispute any mistakes of fact, and constitutes the only notice necessary to amend a withholding order.

NOTE: The SNOI does not apply when the withholding order was issued for current support only, pending the resolution of a letter of delinquency under section CS 510.3, and the delinquency withholding action associated with that letter of delinquency has not yet been completed. (A Notice of Intent to Withhold Income (NOI) should be used to amend the withholding order as necessary in this situation--see section CS 510.3.)

When the SNOI proposes a change in withholding for support debt, it is accompanied by a Debt Computation Worksheet (Debt Comp). The Debt Comp must reflect, at a minimum, all payments and monthly obligations beginning with the date of accrual of the oldest unnoticed debt. (EXCEPTION: In the case of a judgment, the date of entry of the judgment becomes the accrual date for the individual debts it contains.)

Conditions for Issuing Notice. The CSED will issue an SNOI prior to changing an existing withholding order when one or more of the following conditions

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ADMINISTRATIVE

subject: Supplemental Notice
of Intent to Withhold

applies:

Condition 1--Adding Withholding for Support Debt.

Income withholding has been ordered for current support only, and no delinquency withholding action is pending under section CS 510.3; withholding is proceeding or a payor has been identified; the obligor owes a support debt; and the circumstances of the case indicate a change in withholding at this time is appropriate.

EXAMPLE 1A: The obligor has accrued arrearages during brief periods of unemployment subsequent to the withholding order. It appears this pattern is continuing. It may be desirable to wait to notice the accumulating debt until (a) the debt reaches an appropriate dollar level, or (b) the unemployment pattern changes (arrears stop accruing).

EXAMPLE 1B: The obligor accrued the support debt before the withholding order was issued, and no arrearages have accrued since the withholding began. It is usually desirable in this situation to add the support debt to the withholding action as soon as possible.

Condition 2--Changing Withholding for Support Debt.

Income withholding has been ordered for noticed support debt (with or without current support); withholding is proceeding or a payor has been identified; the obligor owes an **additional** support debt; and the circumstances of the case indicate a change in withholding at this time is appropriate.

EXAMPLE 2: The addition of the new debt to the existing withholding at this time would result in a **lower** monthly withholding amount. In this situation it may be desirable to wait until the declining balance of the noticed support debt approaches \$0 before changing the withholding to include the additional debt.

NOTE: Calculating the New Monthly Withholding. The possibility of a lower monthly withholding amount in Example 2 is related to the way SEARCHS

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calculates changes in monthly withholding for support debt. Suppose the existing withholding includes \$200 per month for support debt, and the remaining unpaid balance of the noticed debt is \$800. The additional (unnoticed) debt is \$1,600, for a total support debt of \$2,400. Dividing by 24, the new withholding for support debt would be only \$100. Delaying notice of the additional debt would allow the CSED to continue collecting the \$200 amount for up to four more months.

NOTE: Tracking the Declining Balance. As the declining balance of a noticed support debt approaches \$0, the caseworker will receive two SEARCHS ticklers--the first indicating that the declining balance is "low or paid in full," and the second (if no action is taken), indicating the debt portion of the last withholding payment has been applied to a "prepaid" account. Before this second tickler is received, however, the caseworker may obtain other information to determine the optimum timing for updating the declining balance.

Condition 3--Adding or Changing Withholding for Support Debt, No Payor Identified. Income withholding has been ordered and no delinquency withholding action is pending under section CS 510.3; the obligor owes a support debt not included in the withholding order; no payor has been identified; and there is sufficient reason (despite the lack of a payor) to notice the debt in connection with income withholding at this time.

EXAMPLE 3: The obligor has left the employment of the last payor of income and is not expected to regain employment. The CSED is aware of certain assets that may be subject to administrative lien or other enforcement, and wishes to update the noticed debt for that purpose. A Notice of Support Debt may not be as effective as a Supplemental Notice of Intent to Withhold in this situation because the SNOI includes a more advantageous response time.

Condition 4--Changing Withholding for Current

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subject: Supplemental Notice
of Intent to Withhold

Support. Income withholding is proceeding or a payor has been identified, and the amount of current support collectible by the CSED has changed (increased or decreased) since the last withholding order was issued because one of the following situations exists:

- a. The existing support order includes a clause describing the conditions under which the support obligation will change, but relies on events or information outside the support order itself to specify the change.

EXAMPLE 4A: An "escalator" (or de-escalator) clause increases (or decreases) the support amount annually according to an external variable, such as the consumer price index.

EXAMPLE 4B: A "reverter" clause orders support payments of X as long as the obligor pays the air fare for monthly visits, but reverts to support payments of Y if the obligor stops paying the air fare.

- b. In a case not subject by date of order to immediate income withholding, no delinquency withholding action is pending under section CS 510.3, and the CSED has gained or regained the authority to collect current support, while the monthly obligation remains the same.

EXAMPLE 4C: The obligee is receiving public assistance, but the obligor is not employed so income withholding is not available. The obligee goes off public assistance and declines continuing services. Later, the CSED locates an employer for the obligor, notices the obligor for public assistance arrears, and begins withholding. Then, the obligee goes back on public assistance--or applies for non-public assistance services--so income withholding for current is now available.

NOTE: If no additional support debt has accrued since the last notice, the CSED may issue an SNOI

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subject: Supplemental Notice
of Intent to Withhold

to change the amount of current support but keep the existing arrearage payment the same.

EXAMPLE 4D: The obligor was noticed for current support of \$100 and a monthly arrears payment of \$200 on a \$4,800 support debt. A year and a half has passed since the notice. The unpaid noticed balance has declined to \$1,200, and no additional support debt has accrued. Now, the current support increases to \$150 per month, and the CSED intends to issue an SNOI for the new current support amount. The CSED retains the \$200 payment for the support debt, instead of recalculating the payment at 1/24th of the remaining \$1,200 and extending the debt payment through another 24 months at \$50 per month.

IMPORTANT: The CSED will not issue an SNOI unless one of the conditions 1 through 4 (above) applies. Note that, except in condition 3, the CSED will not issue an SNOI for a change in current support or support debt unless and until a current payor of income has been identified.

Changes in Withholding Not Requiring SNOI. The CSED will proceed with a change in an existing withholding action without issuing an SNOI when

- the existing withholding is subject to resolution of a delinquency under section CS 510.3 (an NOI, not an SNOI, applies in this situation), OR
- the support order or a portion of the monthly obligation terminates according to its terms (including emancipation of a child), OR
- IV-D services are terminated while the obligation still exists, OR
- the obligor has been noticed for all amounts in the new withholding order, whether by a separate withholding notice, or by a support order subject to immediate income withholding

EXAMPLE: Using Example 4C, if the case were subject to immediate income withholding the new withholding order adding current support

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subject: Supplemental Notice
of Intent to Withhold

could be issued without notice, since the support order itself constitutes the only required notice for current support, OR

- a child covered by the withholding order is adopted, and the obligor is no longer responsible for the child's support, OR
- a judgment is entered that updates the support debt, and an SNOI is not required for a change in current support, OR

NOTE: In the above situation the CSED **must** change the arrears payment to 1/24th of the new balance if the judgment contains any unnoticed support debt, or if the judgment is the result of a replacement action affecting amounts due in previous months (see section CS 401.5). If the judgment contains previously noticed support debt only, and is not a product of retroactive replacement, the CSED **may**--but is not required to--change the arrears payment to 1/24th of the new balance.

- a court or administrative order changes the amount of current support payable, by
 - modification of the original order, or
 - replacement of the original order under section CS 401.5, or
 - use of a specific change clause in the support order itself (where there is enough information to determine the new obligation directly from the text of the order), regardless of the reason the CSED is collecting current support (letter of delinquency, NOI, SNOI, order dated 1/1/90 or after), OR
- there is no longer a support debt owed (it has been paid off by income withholding, tax offset, or other means), OR
- only the named payor will be changed--amounts listed on the withholding order will remain the same.

Service of SNOI. In any of the "conditions for issuing notice" described above, if the obligor has

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of Intent to Withhold

been served with a previous SNOI or with a Notice of Intent to Withhold Income (NOI) by personal service, certified mail, or acknowledgment, or if the obligor has signed a voluntary withholding authorization waiving service, the CSED may send the current SNOI by regular United States mail. In all other cases service of the SNOI must be by personal service, certified mail, or acknowledgment.

Where service by regular mail is appropriate, no receipt for service is required since, unless the SNOI is returned by the Postal Service, Montana law presumes it is received.

The CSED sends a copy of the withholding notice to the obligee by regular United States mail.

In any case, if service of the SNOI on the obligor fails, the CSED must make diligent effort to locate the obligor and obtain service. In cases where the existing support or paternity order carries the required "deemed service of process" warning (MCA section 40-5-226(12)), then, if the obligor cannot be located, by law the CSED's service-of-process requirement is met upon delivery of the SNOI by regular mail to the obligor's last known address reported to the CSED.

Reasons for Contesting Supplemental Withholding Notice. Upon receipt of an SNOI the obligor may contest the proposed withholding based upon a mistake of fact, which includes a mistake

- (1) Concerning the obligor's identity
- (2) Concerning the existence of the support obligation
- (3) Concerning the amount of current support to be paid
- (4) In computation of any support debts owed.

Existing Withholding Not Stayed for Hearing. Unlike the NOI, the SNOI does not notify the obligor of an action already taken, but of a proposed action. The proposed modification of the

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existing withholding order does not occur until the obligor's right to hearing is exhausted. Therefore, there is no action to be "stayed" (discontinued pending hearing). Income withholding that is already in place under the existing withholding order is, by law, not subject to stay.

PROCEDURE:

Responsibility

ACTION

Caseworker

1. Identifies an income withholding case in which one or more of the "conditions for issuing notice" exist. If all the requirements of condition 1 (adding withholding for support debt), condition 2 (changing withholding for support debt), or condition 4 (changing withholding for current support) are met except that the source of income is not known, proceeds with income locate actions; returns to step 2 when source of income is located.
2. Enters appropriate SEARCHS information on NOS screen, setting up new declining balance for current support, support debt, or both.
3. Determines appropriate method of serving notice on obligor, according to options below. Selects option "a" if option "b" has been used previously to serve a withholding notice in the case; selects option "b" if not used previously:
 - a. Regular United States mail, or
 - b. One of the following methods:
 - (1) Personal service by the sheriff or a private process server
 - (2) Certified mail
 - (3) Acknowledgment of service by the obligor.

NOTE: If the obligor has previously waived service by signing form CS-510.4A, Voluntary Withholding Authorization, option "a" is the appropriate method.

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ADMINISTRATIVE

subject: Supplemental Notice
of Intent to Withhold

4. Within 15 days of identifying a case under step 1, generates necessary documents on SEARCHS, compiles notice package, and issues package for service on obligor. Complete notice package includes

- (1) Form CS-510.10, Supplemental Notice of Intent to Withhold (copy; or, if sheriff's service is used, original and one copy--sheriff will return original to the CSED)--must list any amounts for current support, support debt, and total unpaid debt that are proposed for change, and any amounts in effect and not proposed for change
- (2) Supplemental Notice of Intent to Withhold Request for Hearing--will be generated automatically with SNOI
- (3) [If SNOI includes change in support debt:] Form CS-501.1A, Debt Computation Worksheet (photocopy)--must be attached to notice; must list payments and obligations for each month since accrual of oldest debt proposed for addition to withholding
- (4) One of the following service documents, if necessary:
 - Form CS-401.3G, Sheriff's Praecipe (original)
 - Form CS-405.1, Acknowledgment of Receipt of Notice and Waiver of Service (if the obligor cooperates)
 - Certified mail.

NOTE: Documents (1) and (3) above may be generated individually or in the SEARCHS SNOI packet ("SNOI PAC").

The caseworker is responsible for review and verification of the content and accuracy of each document prior to issuance.

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NOTE: "Issue" date. For purposes of meeting time frames, "issues package" means mails package in regular U.S. mail, provides package to the sheriff or process server, provides package to the obligor, or sends package by certified mail.

NOTE: Service date. A notice package is considered served on one of the following dates, according to the type of service:

- (1) Regular mail--three calendar days after mailing (presumed)
- (2) Sheriff's or private process service--date listed on sheriff's return or on affidavit of service
- (3) Certified mail--date of delivery listed on the certified mail card returned to the CSED
- (4) Acknowledgment--date listed on the signed Acknowledgment.

NOTE: Successful service. In cases where there is a question of whether service has been successful, consult your CSED staff attorney.

5. Mails copy of SNOI and Debt Comp to obligee simultaneously with issuance of notice package to obligor. In incoming interstate cases mails obligee copies to the initiating state.

IMPORTANT: Checks SEARCHS and case file for any reason to protect address or place of employment of obligor. If reason found, removes obligor's address, and name and address of employer, from any copies sent in this step.

6. Monitors for successful service.
 - a. Upon obtaining service, enters date of service on appropriate SEARCHS screen.
 - b. If service fails (including if regular mail is returned undelivered), attempts

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to obtain updated address; if found, arranges for service of notice package, and monitors and enters date of service as above. If service cannot be obtained despite diligent efforts to locate obligor, checks existing support or paternity order for basis for deemed service of process.

- i. If no basis exists, removes any presumed service date entered for regular mail, and continues periodic efforts to locate for service; takes no further action in this section until service is obtained.
 - ii. If basis exists, mails SNOI package by regular mail to last known address reported to CS&ED. Determines date of deemed service, using presumed delivery by regular mail, and enters on SEARCH&S. Prepares and retains in case file form CS-405.2, Efforts to Locate for Service, documenting locate attempts and final mailing. Proceeds in this section as if service had been obtained.
7. Monitors for return within response period (10 working days following date of service on obligor). Takes action as follows:

NOTE: Hardship requests. A hardship adjustment may be requested at any time in the process (see section CS 510.5), but the procedures and time frames described in this section will continue to apply.

- a. If obligor does not timely request a hearing or timely contact the CS&ED and prove the change in withholding is not appropriate, or if hearing is denied, within 15 calendar days of end of

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response period proceeds as in step 9 for noticed amounts.

- b. If obligor timely contacts the CSED and proves no change in withholding is appropriate,
- if hearing has been requested, prepares form CS-401.3F, Motion and Order to Dismiss Administrative Notice, forwards to Office of the Administrative Law Judge for approval, and notes withdrawal of the withholding notice in the case record.
 - if no hearing has been requested, notes withdrawal of the withholding notice in the case record.

In questionable cases, consults supervisor or CSED staff attorney concerning further action.

- c. If obligor timely contacts the CSED and proves (1) a **different** change in withholding is appropriate or (2) other non-dollar information listed in the notice is incorrect, makes efforts to obtain voluntary withholding authorization from obligor (see section CS 510.4). If voluntary agreement is not possible, works with CSED staff attorney to issue amended SNOI reflecting corrected information.

NOTE: If it appears the matter will go to hearing despite any agreed change(s), the caseworker should consider whether to amend the notice in writing, or to suggest to the obligor that the notice be amended orally at hearing. If the notice is amended in writing and the case then goes to hearing, both the original **and** amended SNOI should be included with the hearing exhibits.

- d. If obligor timely requests a hearing in

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writing, contacts OALJ and obligor to identify hearing issues. Prepares CSED case for modification of existing withholding, and presents at hearing. Proceeds to step 8.

8. Upon receiving decision and order from hearing on modification of withholding, within 15 calendar days after date of decision and order proceeds as in step 9 for amounts declared in decision and order.
9. Completes and sends withholding order to current employer as in step a, b, or c below, according to applicable procedures in section CS 510.1.
 - a. If withholding order has not been issued to current employer, sends form CS-510.8A, Order to Withhold Income.
 - b. If withholding order has been issued to current employer, and no hearing was granted or decision and order calls for change in existing withholding, sends form CS-510.9A, Order to Modify/Terminate Withholding.
 - c. If withholding order has been issued to current employer, and decision and order disallows any change in existing withholding, sends no withholding order; takes no further action in this section.

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Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
CIVIL ENFORCEMENT ADMINISTRATIVE

subject:
Violation Income Withholding

SUPERSEDES: CS 510.11, "Violation Income Withholding", November 11, 1994

REFERENCE: 45 CFR 303.100, MCA 40-5-411, 40-5-412, 40-5-413.

POLICY: Conditions for Initiating Violation Withholding. Where the obligor is exempted from immediate income withholding by an "alternative arrangement," the CSED must initiate income withholding if certain conditions arise. In non-public assistance cases the CSED must initiate withholding if it (1) receives a request from the obligee alleging the obligor is in violation of the terms of an alternative arrangement, and (2) possesses or receives adequate evidence to support the claim the obligor is in violation. In public assistance cases the CSED must initiate withholding if condition (2) above applies. Withholding initiated according to the provisions of this paragraph is referred to as "violation withholding." (For example, in a non-public assistance case where the alternative arrangement calls for the obligor to provide transportation for the child to after-school care on weekdays, if the obligor fails to provide the transportation and the obligee requests income withholding on this basis, the CSED must, with adequate evidence of the violation, initiate withholding.)

Alternative Arrangement Defined. For purposes of this section, an "alternative arrangement" or "alternative agreement" is a written or oral agreement for payment of support that

- exempts the obligor from immediate income withholding;
- is signed by the obligee, the obligor, and, if public assistance is or was being paid, the CSED;

NOTE: For purposes of this section an agreement exempting the obligor from income withholding, that is recognized in a support order entered by the CSED after legal notice to all obligated parents, satisfies the requirements for a "signed" agreement.

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- is approved and entered in the record of the court or agency issuing or modifying the support order;
- provides sufficient security to ensure compliance with the arrangement; and
- specifies the terms of alternative payment.

Arrangements not covered by this definition are not subject to the income withholding requirements of this section.

Current Support Amounts. An alternative arrangement may provide for a monthly support amount different from the amount listed in the underlying support order. Such an agreement does not modify the support order, or in any way affect the amount payable under the order. The current support account on SEARCHS will continue to be set at the ordered amount. If the agreed amount is higher than the ordered amount, the CSED will set up a no-order account for the difference.

Violation and Evidence of Violation. The obligor is in violation of the terms of an alternative arrangement if the obligor fails to pay the agreed amount or fails to meet any other terms of the arrangement. Other terms may include but are not limited to maintenance of the agreed security, payment of the amount by a certain day in the month, transportation of the children, payment of other costs, or child care. In cases where there is a question of whether there is adequate evidence to support the claim of violation, the caseworker should consult the CSED staff attorney before proceeding with income withholding.

Delinquency Withholding vs. Violation Withholding. When an obligor fails to pay the amount specified in an alternative arrangement, delinquency income withholding may apply, depending on the amount ordered and the amount paid.

EXAMPLE 1: The ordered amount is \$180 per month, but the alternative arrangement provides for a payment of \$200. If the obligor pays \$190 in a

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month, the obligor is not delinquent, but is in violation of the terms of the arrangement. Violation withholding applies if the obligee (the CSED in a public assistance case) requests it. If the obligor pays only \$160 in a month, the obligor is delinquent with respect to the ordered amount, and delinquency withholding applies.

EXAMPLE 2: The ordered amount is \$180 per month, but the alternative arrangement provides for a payment of \$150. If the obligor pays \$160 in a month, the obligor is not in violation of the amount of the arrangement, but is delinquent with respect to the ordered amount. Delinquency withholding applies.

IMPORTANT: If a delinquency occurs while an alternative arrangement is in effect, the CSED will initiate delinquency income withholding as described in section CS 510.3, regardless of whether the obligee claims a violation of the alternative arrangement. If the obligor timely cures the delinquency under the procedures in CS 510.3, there is no "violation" recognized for the delinquency. Of course, violation withholding may still apply for other reasons.

Due Process Requirements. Where delinquency withholding does not apply, but the conditions for initiating violation withholding are met, the CSED proceeds with a Notice of Intent to Withhold Income (NOI), alleging violation of the alternative arrangement, and stating the amounts to be withheld for current support and, if applicable, support debt. PLEASE NOTE: Although the NOI is used in both processes, violation withholding under this section differs from delinquency withholding under section CS 510.3 in several ways:

- (1) There is no procedure for allowing the obligor to "cure" the violation before the NOI is issued.
- (2) The NOI must be adapted to contain a description of the violation; a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting

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the terms of the alternative arrangement; and a statement of intent to withhold for current support, rather than the standard statement that withholding has been ordered.

- (3) No withholding order is issued with the NOI. (Under Montana law, before the CSED can order income withholding on the basis of a violation, it must provide the obligor with an opportunity for a hearing on the notice.)

The caseworker should consult the CSED staff attorney in adapting the NOI according to the characteristics of the alternative arrangement and the violation being alleged.

A withholding notice issued for violation of an alternative arrangement may be contested on the basis of a mistake of fact, which includes a mistake

- (1) Concerning the obligor's identity
- (2) Concerning the existence of the support obligation
- (3) Concerning the amount of current support to be paid
- (4) In computation of any support debts owed
- (5) In the allegation that the obligor is in violation of the alternative agreement.

Amounts Listed in Notice. Amounts listed in the NOI for violation withholding are restricted as follows:

- (1) Current Support. The current support amount contained in the NOI must be the obligation stated in the support order; any different amount contained in the alternative arrangement does not apply.
- (2) Support Debt. The only support debt that can be alleged in the NOI is debt for unpaid fees, fines, or penalties. If a delinquency has occurred with respect to the ordered amount, violation withholding is not appropriate because delinquency withholding under CS 510.3

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takes priority. If the obligor has failed to pay the amount in the alternative arrangement but is not delinquent with respect to the ordered amount (the amount in the alternative arrangement is higher than the amount in the support order), violation withholding is appropriate, but there is no support debt to enforce.

PROCEDURES:

Responsibility

ACTION

Caseworker

1. Identifies a case in which the obligor has violated the terms of an alternative arrangement (see POLICY; also see section CS 510.3 for information concerning identification of income source).
2. Consults CSED staff attorney for adaptation of form CS-510.3, Notice of Intent to Withhold Income, and other documents required for notice package (see section CS 510.3 for notice package contents).
3. Enters necessary SEARCHS information; creates necessary documents (see section CS 510.3 for SEARCHS screen processing and document generation).
4. Within 15 calendar days after identifying a violation under step 1, issues and secures service of notice package (see section CS 510.3 for service procedures); if service fails, checks for basis for deemed service of process and proceeds as in section CS 510.3.
5. Mails copies of appropriate documents to obligee simultaneously with issuance of notice package to obligor.

IMPORTANT: Checks SEARCHS and case file

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for any reason to protect address or place of employment of obligor. If reason found, removes obligor's address, and name and address of employer, from any copies sent to obligee.

6. Refers to section CS 510.3 for applicable steps and time frames associated with response to notice, determination of whether withholding is proper, and issuance of withholding order.

Department of Public Health and
Human Services

section:
CIVIL ENFORCEMENT ADMINISTRATIVE

CHILD SUPPORT ENFORCEMENT

subject:
Registration of Income Withholdi
Order

SUPERSEDES: CS 510.12, "Registration of Income Withholding Order, March 20, 1995.

REFERENCE: Sections 40-5-431, and 40-5-188 through 40-5-191, MCA.

POLICY: This section contains CSED policies and procedures for registering and enforcing income withholding orders issued by other states. This process is especially useful when the withholding order includes both current support and support debt, because it allows the CSED to begin withholding for both amounts immediately, without noticing the obligor of the intent to withhold, or requiring the debt amount to be contained as a judgment in the underlying support order. **Registration of an income withholding order under this process does not confer jurisdiction to modify the support order.**

NOTE: Income Withholding Order Defined. For purposes of this section an "income withholding order" issued by another state is one that explicitly orders income withholding for specified amounts. Amounts may be in terms of dollar amounts, or percentages of income; withholding for support debt, if included, may be given in terms of a specified lump-sum debt or monthly payment amounts. For this reason an income withholding order eligible for registration may take the form of (1) a support order or divorce decree that includes an explicit income withholding provision, (2) a separate order for withholding in the case, or (3) an order to a specified or "to be named" payor requiring withholding and payment.

The CSED may register another state's income withholding order whenever the following criteria are met:

- (1) The CSED has authority to proceed in the case through
 - an interstate referral, or
 - a direct referral from an out-of-state obligee, or
 - an application for services or assignment of rights from a Montana obligee
- (2) The obligor derives income within Montana

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- (3) The CSED can assemble a registration "application" made up of the following documents:
- (a) A certified copy of the other state's income withholding order (or a "true and correct" copy with an original notarized signature)
 - (b) A certified copy of the underlying support order (if different from (a))
 - (c) A sworn statement of the facts entitling the other state to issue an income withholding order, including
 - (i) A statement of the amount of arrearages (unless the information is included in another application document)
 - (ii) A statement that all due process requirements have been met--it may be necessary to request proof of service.

NOTE: "Foreign" Defined. For purposes of this section, the term "foreign" means "issued by the IV-D agency or court of another state, a U.S. territory, Indian Tribe, or a Canadian province."

The CSED regional office "registers" a foreign withholding order by (1) obtaining the necessary documents for the registration application (see above), (2) determining the application is complete, and (3) maintaining a "file stamp" copy of the withholding order and accompanying documents in the case file. Each regional office is required to maintain a registry of all foreign income withholding orders it registers; the registry may be the individual case files containing the registered orders.

NOTE: Process Available to Interstate and Non-Interstate Regions. This process is available in intrastate as well as interstate cases. A Montana obligee applying for CSED services may produce an income withholding order issued in another state. The CSED may then contact the other state and obtain the necessary information and documents to register and enforce the withholding order under

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this process.

When a foreign income withholding order is registered, the CSED must serve a notice of registration on the "nonregistering party" (the obligor); service may be by regular mail. To contest the validity or enforcement of the registered order the obligor must request a hearing with the CSED Office of the Administrative Law Judge (OALJ) within 20 calendar days after receiving the notice (23 days after the CSED mails the notice). Any hearing requests received in the regional office should be date-stamped and forwarded immediately to the OALJ. If the obligor does not timely request a hearing, the registered withholding order is confirmed by operation of law.

Concurrently with the notice of registration the CSED issues a withholding order to the Montana payor of income; the CSED's withholding order is limited to the amounts or percentages listed in the foreign withholding order for current support and support debt. (If the foreign withholding order contains a lump-sum debt amount instead of a monthly payment on the debt, the CSED withholding order should list the debt payment at 1/24th of the total debt.) Hardship adjustments are available under this procedure as described in section CS 510.5.

At a withholding registration hearing the obligor must establish one or more of the following defenses:

- (1) The issuing state lacked personal jurisdiction over the obligor
- (2) The order was obtained by fraud
- (3) The order has been vacated, suspended, or modified by a later order
- (4) The issuing state has stayed the withholding order pending appeal
- (5) There is a defense under Montana law to income withholding in this case
- (6) Full or partial payment of the support debt referenced in the withholding order has been made
- (7) The statute of limitations precludes

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enforcement of some or all of the support debt. (The statute of limitations that applies is either Montana's or the statute of limitations in the state that issued the income withholding order, whichever is longer.)

No other defenses are allowed. If the obligor does not prove any of the above defenses, the OALJ will issue an order confirming the registered withholding order.

Once a registered withholding order is confirmed either by operation of law or after notice and hearing, the order may not be further contested by the obligor on any matter that could have been asserted at the time of registration.

If at hearing the obligor establishes full or partial defenses, the OALJ will stay enforcement of the appropriate portions of the registered order. The CSED will then take further actions as available to resolve and pursue enforcement by withholding.

Debt accrued after the entry of the foreign income withholding order cannot be included in the CSED's Order to Withhold Income under this process. To withhold for additional debt, the CSED must observe the proper notice process, using the Supplemental Notice of Intent to Withhold (SNOI). The region may serve an SNOI only after the registered foreign withholding order has been confirmed. Certified or personal service of the SNOI is required.

In lieu of registration of the withholding order, three other processes are available for initiating income withholding in cases with foreign support orders:

- (1) Registration of Support Order for Enforcement (section CS 500.2)--available to all regions. This process allows initiation of income withholding for current support concurrently with registration of the support order (no foreign withholding order is required); it

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requires the full SNOI process for withholding for any support debt not listed on the support order, and makes the support order subject to modification in Montana.

- (2) Notice of Intent to Withhold Income (section CS 510.3)--available to all regions. This process applies only in delinquency cases, and requires the full process outlined in section CS 510.3 to initiate income withholding (no registration is required).
- (3) Registration of Foreign Support Order for Enforcement (UIFSA booklet)--**available to Interstate Region only**. This process allows initiation of income withholding for current support concurrently with registration of the support order (no foreign withholding order is required); it also begins a special notice process for any support debt not listed on the support order, and does not open the support order to modification in Montana.
- (4) Immediate Income Withholding by Authority of MCA 40-5-404--available to all regions. This process allows immediate income withholding for current support (section CS 510.15) based on the underlying support order; immediate withholding for support debt may be available depending on the support order language. Registration or notice processes (items (1) through (3) above) may be preferable, however, where there is a likelihood of a contested case or a challenge to the underlying support order. On questions of whether section 40-5-404 applies to a particular case, the CSED staff attorney should be consulted.

PROCEDURE:

Responsibility ACTION

- | | |
|------------|--|
| Caseworker | 1. Determines registration of foreign income withholding order is appropriate; obtains and file stamps documents needed for complete |
|------------|--|

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application for registration.

2. Enters appropriate SEARCHS information on NOS screen, creating "notice" and setting up declining balance for current support and, if applicable, additional declining balance for support debt.
3. Concurrently prepares and issues the following packages:
 - (1) Notice of registration package--to the obligor; may be served by regular mail:
 - (a) Form CS-510.12A, Notice of Registration of Income Withholding Order (original)
 - (b) Form CS-510.12B, Registration for Income Withholding Hearing Request (original)
 - (c) Copies of registered foreign income withholding order, and any documents or relevant information included in the application for registration
 - (d) Copy of CSED's Order to Withhold Income (issued to payor).
 - (2) Form CS-510.8, Order to Withhold Income (original)--to the payor of income; must be served by certified mail or personal service. See section CS 510.8 for procedures and SEARCHS processing.Retains appropriate copies or originals in case file; sends copy of Order to Withhold Income to obligee or initiating state.

IMPORTANT: Checks SEARCHS and case file for any reason to protect address or place of employment of obligor. If reason found, removes obligor's address, and name and address of employer, from any copies sent to obligee. In case of referral from other state, notifies initiating state that Montana has determined there is reason to protect address or place of employment of obligor.

4. Monitors response to notice for 23 calendar days following date of deposit in regular

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mail.

- a. If obligor timely requests hearing, proceeds to step 5.
- b. If notice package is presumed delivered (not returned), and obligor fails to timely request hearing, proceeds to step 8.
- c. If notice package is returned undelivered, attempts to obtain updated address and resend package. If updated address cannot be found, determines, with CSED staff attorney, whether deemed service of process under MCA 40-5-226(12) or equivalent authority can be applied. If so, mails package to last known address reported to appropriate agency; completes and retains in case file form CS-405.2, Efforts to Locate for Service; and proceeds as in step 4b above.

5. Prepares and submits to OALJ hearing exhibits as follows:
 - (1) Notice of Registration of Income Withholding Order (copy)
 - (2) Certified copy of foreign income withholding order
 - (3) CSED authority to proceed in case--referral, application, or assignment (copy)
 - (4) Any documents related to obligor's defenses (copies).

OALJ

6. Upon receipt of request for hearing on registration of income withholding order, schedules hearing, issues hearing notices, conducts hearing, and issues order(s) in accordance with requirements of sections 40-5-189, -190, -226, and -253. Mails copies of orders to parties.

Caseworker

7. Issues Order to Modify/Terminate Withholding as needed, according to results of hearing.
8. Monitors for compliance with CSED withholding order. For additional debt accrued since entry of foreign income withholding order,

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prepares SNOI for certified or personal
service and proceeds as in section CS 510.10.

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section:
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CHILD SUPPORT ENFORCEMENT

subject:
Immediate Income Withholding

SUPERSEDES: CS 510.15, "Immediate Income Withholding," August 22, 1994.

REFERENCE: 45 CFR 303.100, MCA 40-5-315; MCA 40-5-411.

POLICY: GENERAL PROVISIONS:

Generally, for child support orders issued or modified in Montana after January 1, 1990, the income of the obligor is subject to immediate withholding beginning on the effective date of the support order. For orders issued in another jurisdiction the income of the obligor becomes subject to immediate withholding in Montana if the CSED registers the order in Montana after October 1, 1991 (see section CS 500.2, Registration of Support Orders); immediate withholding is then effective on the date of registration of the order.

An obligor may be **exempted** from immediate withholding **only** if (1) an appropriate court or agency finds good cause not to require immediate withholding, based on the best interests of the children, or (2) an approved alternative arrangement for payment of support is in place. **WARNING:** Conditions under which these exemptions may apply are **very strictly defined**--see "Exemptions" later in this policy for specific requirements.

The CSED will implement immediate income withholding in all applicable IV-D cases beginning on the later of

- the date the obligor's income becomes subject to immediate withholding as described above, or
- the date the CSED begins providing IV-D services.

Immediate income withholding is provided for by operation of law, without the necessity of a delinquency in support payments, or of a specific withholding provision in the support order. Enforcement of a current support obligation through immediate withholding requires neither modification of the support order nor further notice or other due process procedures on behalf of the obligor.

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subject: Immediate Income
Withholding

BACKGROUND--CHANGES IN STATUTORY REQUIREMENTS:

Legislation passed in 1989 authorized immediate income withholding for court and administrative support orders. The legislation required the department to commence immediate income withholding for current support in all applicable IV-D cases, and also required immediate withholding through the department for orders issued by the district courts. (Obligees in these cases who were not receiving public assistance were required to apply for and receive IV-D services.)

The only exception to immediate income withholding under the 1989 statutes was in the case of a support order issued by a district court that specifically exempted the obligor's income from income withholding upon a finding of (a) good cause not to require immediate withholding or (b) a sufficiently secured alternative arrangement.

In 1991 the statutes were amended to remove the requirement for the department to enforce immediate income withholding for all applicable court-issued support orders. Instead, for obligees not receiving IV-D services, immediate withholding could be enforced through the department (upon application) or through the Clerk of Court.

Also, amendments provided for termination of income withholding when the obligee in a non-public assistance case requested termination of IV-D services. Amendments also allowed both the district courts and the CSED to exempt support orders from immediate income withholding for good cause or alternative arrangements.

CURRENT POLICY--DATE-OF-ORDER WINDOW FOR NON-PUBLIC ASSISTANCE CASE CLOSURE:

The legislation of 1989 and 1991 created a time window that now controls termination of withholding in non-public assistance cases where the support order was established in district court:

1. For support orders entered after January 1,

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1990, but before April 24, 1991,

- a. If the order specifies department or IV-D-related immediate income withholding, IV-D services **may not** be discontinued solely upon the non-public assistance obligee's request. The order **must be modified** to exclude immediate income withholding, or to allow immediate income withholding through the Clerk of Court, before the CSED can terminate the Order to Withhold and close the case. The obligee should be directed to secure modification from the court of original jurisdiction, or from the CSED Review and Modification Unit.
 - b. If the order is silent on the issue of immediate income withholding, or specifies immediate income withholding but does not indicate a specific intention for IV-D services, the IV-D case may be closed upon the non-public assistance obligee's request.
2. For orders established on or after April 24, 1991, including orders specifically directing the department to issue an order to withhold income, IV-D services may be terminated upon request of the non-public assistance obligee.

CURRENT POLICY--ENFORCING IMMEDIATE INCOME
WITHHOLDING:

The CSED now enforces immediate income withholding according to the following requirements:

IV-D Cases Only. The CSED enforces immediate income withholding only in IV-D cases. In cases where the support obligation has been established by the district court the CSED must receive either a referral from IV-A or a non-public assistance application to initiate immediate income withholding (and other IV-D) services.

Exemptions. An obligor may be exempted from

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immediate withholding **only** if the court or administrative authority that issued or modified the support order finds (a) there is good cause (as defined below) not to require immediate withholding, or (b) there is an alternative arrangement (as defined below) between the parties for payment of support. The caseworker should confirm any exemption with the CSED staff attorney.

"GOOD CAUSE" DEFINED: A finding of good cause must include a written determination and explanation by the court or administrative authority as to why implementation of immediate withholding would not be in the best interests of the child. Also, in the case of a modified order, there must be proof the obligor has timely paid previously ordered support.

"ALTERNATIVE ARRANGEMENT" DEFINED: An alternative arrangement must be in the form of a written agreement signed* by the obligor, the obligee, and, if public assistance is or was being paid, the CSED; must specify the terms of alternative payment, and provide sufficient security to ensure compliance with the arrangement; and must be approved and entered in the record of the court or administrative authority.

*NOTE: For purposes of this section an agreement excepting the obligor from income withholding, that is recognized in a support order entered by the CSED after legal notice to all obligated parents, satisfies the requirements for a "signed" agreement.

Enforcement Actions. As soon as a case becomes subject to CSED immediate income withholding (see "General Provisions," this section), the CSED must locate the obligor's payor of income. The CSED must issue an Order to Withhold Income to the obligor's payor within 15 calendar days of verifying the obligor's employment or other withholdable income source. Except as noted below the withholding order must specify the obligation for current support **without support debt payments**. If a support debt has accrued since the entry of the support order, the CSED may include a monthly

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Withholding

support debt amount in the withholding by issuing an Order to Modify/Terminate Withholding after the initial withholding order is in place (see section CS 510.10, Supplemental Notice of Intent to Withhold Income, for appropriate notice procedures in this situation).

EXCEPTION: Support debt may be included in the original withholding order (in addition to current support) if (1) the support debt has been specified in the court or administrative support order itself, or has been reduced to judgment by a separate court or administrative order, and (2) the Order to Withhold Income will immediately follow the support order or the judgment order. (Where there is a time lapse between the "support debt" order and the withholding order, it is reasonable to suppose the obligor may have paid some of the debt. The obligor is therefore entitled to notice and opportunity for hearing, and the exception does not apply.)

Notice to Obligor. It is not necessary to issue a Notice of Intent to Withhold in cases subject to immediate income withholding. "Supplemental" notice is required, however, to modify the original withholding amounts to include any non-judgment support debt accrued since the entry of the support order. The first supplemental notice for accrued support debt in a case subject to immediate withholding must be served by personal service, certified mail, or acknowledgment. (See section CS 510.10, Supplemental Notice of Intent to Withhold.)

Spousal Support. The CSED may include spousal support in immediate income withholding, but only for months in which the obligee is also the custodial parent of the minor child.

PROCEDURE:

Responsibility

ACTION

- | | |
|------------|---|
| Caseworker | 1. Upon intake of case in which immediate income withholding applies, locates payor(s) of income to the obligor; verifies employment or |
|------------|---|

section: CIVIL ENFORCEMENT
ADMINISTRATIVE

subject: Immediate Income
Withholding

withholdable income source.

2. Determines if any support debt has accrued since entry of the support order.
 - a. If not, proceeds with immediate withholding (steps 3 and 4) for current support only.
 - b. If so, determines portion of support debt, if any, for which judgments have been entered. Proceeds with immediate withholding (steps 3 and 4) for current support and any support debt included in existing judgments.
3. Enters appropriate SEARCHS information on NOS screen, setting up declining balance for current support and, if applicable, additional declining balance for support debt (see step 2b above).
4. Issues form CS-510.8A, Order to Withhold Income, to the obligor's payor of income within 15 calendar days of verifying employment or income source. See section CS 510.1 for procedures and SEARCHS processing.
5. For any support debt not included in existing judgments (see step 2b above), follows procedures in section CS 510.10, Supplemental Notice of Intent to Withhold, after initial withholding order is in place.
6. Monitors case for accrual of new arrears, identification of prior arrears not included in withholding order, entry of judgments (arrears, fees, or fines), or changes in current obligation. If any of these occurs, follows procedures as applicable in section CS 510.10, Supplemental Notice of Intent to Withhold, and 510.1 (for Order to Modify/Terminate Withholding).

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

CHILD SUPPORT ENFORCEMENT DIVISION



STAN STEPHENS
GOVERNOR

JULIA E. ROBINSON
DIRECTOR

State of Montana

(406) 444-4614
(406) 444-1970 (FAX)

P. O. BOX 5955
HELENA, MONTANA 59604

October 23, 1990

To: All CSE Manual Holders
From: Jon Meredith
Subject: New Manual Sections and Forms -- Medical Support
Enforcement procedures -- Corrective Action

New manual sections CS 520.1, CS 520.5 and CS 520.7 with related forms were distributed at the Supervisor's meeting in Helena, September 28 and 29, 1990. This memorandum is intended to supplement those pages and forms throughout the corrective action period. Please consult Dennis and me before implementing procedures not specifically addressed in the corrective action plan.

The mass mailing will consist of a hard copy for each region including the Missoula County Attorney's Office. It will be broken down by region, by caseworker, by class code. Class codes 12, 32, 74, and 75 have been excluded. The cases must be IV-D open; must be type of support 1, 3, or 4; must have a medical support code of V, blank, A, or O; must have a current support account type of 01, 03, or 05; and must have obligor city, state and zip code.

The first mailing took place October 22, 1990. The cases with medical support codes of V, blank, and A will be conducted in three mailings, (one third of each regions appropriate caseload by medical code) with the last mailing of O's to take place in January 1991.

By region the following statistics will apply:

	<u>V/Blank & A</u>	<u>O's</u>	<u>Total</u>
#2	378/3=126 cases per mailing	422	800
#3	649/3=216 cases per mailing	652	1301
#4	539/3=180 cases per mailing	545	1084
#5	588/3=196 cases per mailing	776	1364
#8	604/3=201 cases per mailing	738	1342
#15	28/3= 9 cases per mailing	57	85

CORRECTIVE ACTION PERIOD

The date for completion of corrective action on ALL cases needing medical support enforcement is February 28, 1991. A completed action must have taken place by February 28, 1991 or anytime during the prior twelve (12) months. See the definition of "cases needing enforcement" and "completed action" below. The total and accurate implementation of these procedures is essential for successful completion of Montana's Corrective Action Plan. Failure to do so will result in the imposition of sanctions which would significantly reduce Montana's federal AFDC funding.

CASES NEEDING ENFORCEMENT

All IV-D cases opened or reopened after December 1, 1985, and cases opened prior to that date containing orders for health insurance coverage, require medical support enforcement action and will be audited. Orders without health insurance provisions entered prior to December 1, 1985 will not be audited.

COMPLETED ACTION DEFINED

A completed action occurs when health insurance coverage and information about that coverage are transmitted to TPL, or when the enforcement procedures in CS 520.7 are followed in a timely and appropriate manner. Enforcement steps must continue until they are complete, or until the obligor is in compliance with the requirements of the health insurance order and reporting requirements.

CORRECTIVE ACTION PROCEDURES

During the corrective action period, the following audit requirements and CSED procedures shall be applied in all cases needing medical support enforcement:

Petitioning for Health Insurance -- ALL CSED standard forms for establishment or modification of support orders contain petitions for health insurance. All petitions for new or amended support orders in district court brought by CSED attorneys will contain requests for health insurance orders. All URESA petitions and interstate transmittals prepared by the CSED will contain requests for health insurance orders. No additional implementation need be attempted during the corrective action period.

Collecting Health Insurance Information -- A "mass mailing" of Questionnaires Concerning Health insurance will be sent to the obligor in ALL cases needing medical support enforcement services. Due to the large number of cases and limited CSED resources, the mailing will be sent in four monthly installments. The first installment will be mailed October 19, 1990. The obligors will have 20 days to respond to the questionnaire. The final mailing will be sent to obligors without health insurance orders. Since these cases are not within the 1987 definition of "needing health insurance enforcement services, no follow-up will be required.

Reporting Health Insurance Information -- ALL completed questionnaires returned by the obligor to the CSED regional office will be copied and forwarded to TPL via the CSED hearings office in Helena. All medical support enforcement information gathered informally on new or old cases during the normal course of business by the CSED caseworker will be reported to TPL using the same form and procedure.

Enforcing Health Insurance orders -- If an obligor fails to return a completed questionnaire within 20 days, the CSE system will notify the CSED caseworker that a "NOTICE OF FAILURE TO OBTAIN AND MAINTAIN HEALTH INSURANCE" (form CS-520.7A) must be issued to the obligor. Since the system will make its determination based on the status of the medical code, it is essential that codes be updated immediately and consistently as information is received by the caseworker. Each caseworker should also independently monitor their printout for follow-up activity. The system will also check ESD records to determine if the obligor is employed. If not, the system will exclude the name from the notice list and monitor employment. If the case file has more recent affirmative information regarding employment, you will be required to send the obligor a CS 520.7A. If employment is subsequently discovered, the obligor's name will appear on the next list and a CS 520.7A will be required.

The caseworker will be responsible for reviewing the case record, determining if enforcement is needed, and if so, preparing a Notice of Failure to Obtain and Maintain Health Insurance. During the Corrective Action Plan period, follow the procedure specified in this memo rather than following the procedure outlined in the CSED manual in section CS 520.7, page 4, number 6.

1. Send to the obligor's last known address the following notice packet:

CS 520.7G, "Notice and Acknowledgement of Receipt of Administrative Notice"
CS 520.7A, "Notice of Failure to Provide Health

Insurance"
CS 405.2, "Request for Hearing"
CS 520.3A, "Notice and Questionnaire Concerning
Health Insurance"
Calendar for the 24th day.

NOTE: The form CS 520.7G does not appear in the CSED manual as it will be used only during the corrective action period. The caseworker or typist should complete the top portion of page 1 and the top portion of page 2 including regional office address before mailing the form.

2. If the CS 520.7G, "Notice and Acknowledgement of Receipt of Administrative Notice" is returned to the regional office prior to the 24th day after it was mailed, and:
 - a. the obligor requests a hearing within 10 days after signing the CS 520.7G, proceed with the hearing procedures as outlined in CS 405.2.

NOTE: The hearing request will be considered timely if the request reaches the Hearings Office (or regional office) by the 34th day after the Notice was mailed to the obligor.

- b. the obligor does not request a hearing within 10 days of signing the CS 520.7G, the health insurance penalty will become final as assessed. The procedures outlined in new section CS 520.7 will be used, including suspension of penalties upon proof of insurance.
3. If the CS 520.7G, "Notice and Acknowledgement of Receipt of Administrative Notice" is not returned to the regional office prior to the 24th day after it was mailed, secure service of the following notice packet:

CS 401.3C, "Praecipe"
CS 520.7A, "Notice of Failure to Provide Health Insurance"
CS 405.2, "Request for Hearing"
CS 520.3A, "Notice and Questionnaire Concerning Health Insurance"

Calendar for the 11th day after sheriff's service.
Proceed with the procedures as outlined in CS 520.7, beginning on page 5 of 24.

If the medical support enforcement questionnaire is returned to the region as undelivered, the class code should immediately be

changed to locate status. Upon location of the obligor, a questionnaire will be forwarded and enforcement steps will be taken as described above.

Periodically Communicating with TPL -- In addition to the reports exchanged under the CSED agreement with TPL, Dennis Shober will contact Terry Frisch monthly to exchange information. Whenever TPL advises CSED of a lapse in coverage, enforcement steps will be taken as described above.

Reviewing Orders for Modification -- Support orders which do not include a health insurance order will be reviewed for modification to establish one whenever the support order is reviewed for modification. The review can occur at the request of the obligor, the obligee, the CSED or when the case is reviewed under the 3 year periodic review procedure. The forms and procedures in part 408 of the CSE manual include petitions for health insurance.

HEARING OFFICER DISCRETION

The CSED Hearing Officer has discretion to relieve an obligor of a health insurance penalty if the obligor shows that health insurance was not available through employment or other group at reasonable cost. Only the Hearing Officer can make this determination. CSED caseworkers must proceed with enforcement regardless of the cost of insurance, so long as it is available through employment or other group.

AVAILABILITY OF INSURANCE THROUGH EMPLOYMENT

At any time throughout the enforcement process, if the CSED caseworker can verify that health insurance is not available through the obligor's employment or union, medical support enforcement can stop, and the matter will be diaried for a date not more than 9 months later. Verification can consist of a written or oral confirmation from the employer and union. Oral confirmation must be documented in the case file record with appropriate notes.

QUESTIONS

Consult your supervisor or a CSED staff attorney if you have any questions concerning these forms, policies and procedures.

JAM/jk

Attachments

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

TO: _____

REGARDING: _____

Child(ren)

CASE NO. _____

Custodian

**NOTICE AND ACKNOWLEDGEMENT OF
RECEIPT OF ADMINISTRATIVE NOTICE**

The enclosed NOTICE OF FAILURE TO OBTAIN AND MAINTAIN HEALTH INSURANCE is hereby served upon you under the authority of Rule 4D(1)(b) of the Montana Rules of Civil Procedure.

You may complete the acknowledgment part of this form and return one copy of the completed form to the Child Support Enforcement Division at the address listed below within 20 days after the date it was mailed to you as shown below.

If you decide to complete and return this form, you must sign and date the acknowledgement.

If you do not complete this form and return it to the sender within 20 days after the date it was mailed to you as shown below, you may be required to pay any expenses incurred in serving a Notice.

If you do complete and return this form, you have 10 days after the date of signature which you place on the acknowledgement below to request a hearing on the form provided. If you fail to request a hearing within the 10 day period, judgment by default will be taken against you for the relief demanded in the Notice.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Administrative Notice will have been mailed on the _____ day of _____, 19____.

STATE OF MONTANA
Department of Social and
Rehabilitation Services

Child Support Enforcement Division

**ACKNOWLEDGMENT OF RECEIPT
OF SUMMONS AND COMPLAINT**

I declare, under penalty of perjury, that I received a copy of the NOTICE OF FAILURE TO OBTAIN AND MAINTAIN HEALTH INSURANCE in the above captioned matter at:

(Address)

Signature

Department of Public Health and
Human Services

section:
MEDICAL SUPPORT ENFORCEMENT

CHILD SUPPORT ENFORCEMENT

subject:
Reviewing Health Insurance
Orders

SUPERSEDES: CS 520.3, Medical Support Enforcement--Reviewing Health Insurance Orders, October 17, 1995.

REFERENCES: M.C.A. §§ 40-5-208 and 40-5-801 through 40-5-825.

POLICY: ALL court and administrative support orders for child support must be reviewed to determine if the obligor is required to provide health insurance for the children. Reviews must be conducted whenever:

- a referral or application for IV-D services is received by the CSED;
- an order is established or modified by the CSED in an open IV-D case; or,
- a IV-D case is re-opened.

HEALTH INSURANCE ORDERS DESCRIBED

For purposes of sections CS 520.3 through 520.7 the term "health insurance order" includes any court or administrative order containing any of the following provisions:

- that the obligor secure and maintain health insurance for the children--even if such order contains a limitation (for example, insurance is required only when available at a cost less than 5% of income); or,
- that the obligor make periodic (monthly, quarterly, etc.) payments to the obligee in a specified dollar amount for payment of health insurance premiums (NOTE: Procedures for reviewing, determining hardship under, and enforcing this type of order may differ from those given in sections CS 520.3 through 520.9; the caseworker should consult the regional CSED staff attorney for assistance); or,
- that the obligor be required to pay premiums directly to an insurance carrier; or,
- that the children receive health care services from the obligor's health maintenance organization (HMO), or other alternative health care plan

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Reviewing Health
Insurance Orders

including Indian Health Service (IHS), and the services are reasonably geographically accessible to the children.

If an order does not contain one of the above provisions, it cannot be considered a "health insurance order," even if it contains other provisions related to medical costs. Provisions that do not in themselves qualify an order as a health insurance order include the following:

- that the obligor is required to pay "all reasonable medical, dental and optical expenses" or a portion thereof; or,
- that the obligor is required to pay "health costs" or a portion thereof; or,
- that the obligor is required to pay "all" medical costs or expenses; or,
- that the obligor is required to make periodic (monthly, quarterly, etc.) payments in a specified dollar amount to the obligee for medical support (with no reference to insurance or health insurance); or,
- that the obligor is relieved of all responsibility for health care or insurance costs, or that the obligee is required to bear them; or,
- that the children receive health care services from the obligor's health maintenance organization (HMO), or other alternative health care plan including Indian Health Service (IHS), and the children's geographic location reasonably precludes use of such services; or,
- that the obligor is required to pay medical expenses not covered by Medicaid or insurance.

Consult your supervisor or a CSED staff attorney concerning any questions about whether an order includes a requirement that health insurance be obtained and maintained.

NOTE: Accounting for Specified "Medical Support" Amounts. Infrequently a child support order includes a requirement for the obligor to pay a specified monthly amount for medical support in addition to the child support amount.

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ENFORCEMENT

subject: Reviewing Health
Insurance Orders

In keeping with the definition of "support order" given in MCA section 40-5-201, the CSED collects and distributes this sum-certain medical amount **as child support**. The caseworker should set up or adjust the SEARCHS accounting in the case so the current child support amount due each month is the total of the "child support" and "medical support" amounts. (This accounting adjustment, however, does not affect the determination of whether the sum-certain medical amount qualifies the order as a health insurance order for the above purposes.)

ORDERS WITH HEALTH INSURANCE REQUIREMENTS

If an order requiring an obligor to obtain and maintain health insurance exists, review of the case record is needed to determine if insurance is currently in place for the specified children. If the information is not in the case record, it must be obtained from the obligor, using form CS-520.3A, "Notice and Questionnaire Concerning Health Insurance."

If the children are covered by health insurance, the CSED must gather certain information about the insurance, must provide that information to the appropriate custodial relative and, if the children are eligible for Medicaid benefits, must also provide the information to the Medicaid recovery or "TPL" unit (the CSED Medical Support Office generally performs this function.) For instructions, see the procedures set forth below.

If the children are not covered by health insurance, the CSED is responsible for ensuring that health insurance is obtained and maintained (see section CS 520.7, "Enforcing Health Insurance Orders" for policy, forms, and procedures).

ORDERS WITHOUT HEALTH INSURANCE REQUIREMENTS

If a support order exists, but it contains no health insurance order (as defined above), the CSED is then responsible for establishing not only a health insurance order, but a broader "medical support order" (MSO) that

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Reviewing Health
Insurance Orders

includes the health insurance order **and** all other medical support provisions required by the Medical Support Reform Act of 1995 (Title 40, Chapter 5, Part 8, MCA). In this situation the MSO is established by the CSED Modification Unit as a modification to the support order. The Unit identifies the case for modification through an automatic SEARCHS report listing cases with no health insurance orders. The caseworker is responsible for completing the necessary medical support/medical insurance fields on SEARCHS so the case will be included in the report to the Modification Unit.

If no support order or obligation exists, the CSED must establish a medical support order (see above paragraph) at the same time as child support is established. Procedures for establishing medical support orders in conjunction with the NFR process are given in section CS 403.1, Notice of Medical Responsibility.

In enforcing the MSO the CSED will first address the requirement for the obligor to provide health insurance for the children. If the obligor cannot provide insurance as required, the CSED will determine whether the children are receiving Medicaid benefits. If they are, and insurance is not available to the other parent, the CSED will then proceed to collect from the obligor the amount specified in the MSO to reimburse the state for medical assistance to the children. Consequently in conducting a "review" under this section the CSED may need to determine not only the availability of insurance to the obligor, but also the availability of insurance to the other parent and whether the children are receiving medical assistance.

In non-AFDC cases where the CSED establishes a medical support order against an obligor who is receiving public assistance money for children not named in the MSO, the CSED will enforce only the health insurance provisions of the medical support order.

NOTE--EXCEPTION IN NON-AFDC CASES: A non-AFDC applicant may refuse health insurance enforcement services. However, non-AFDC applicants cannot refuse these services

section: MEDICAL SUPPORT
ENFORCEMENT

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Insurance Orders

so long as Medicaid eligibility continues.

NEW OR NEWLY MODIFIED ORDERS

Whenever the CSED receives a new or newly modified support order containing a health insurance requirement, information about the health insurance must be obtained from the obligor. If possible, this should be done at the same time other contacts with the obligor are established. Use form CS-520.3A, "Notice and Questionnaire Concerning Health Insurance" to gather the information.

PROCEDURES:

RESPONSIBILITY

ACTION

Caseworker

1. Reviews case record in a new or reopened case, or in any case being processed in the course of ordinary casework, to determine if an obligation to get and keep health insurance has been established.
 - a. If not, makes appropriate notation on SEARCHS SOD screen. SEARCHS will automatically refer appropriate cases to the Modification Unit.
 - b. If so, examines the case record for the following information concerning health insurance coverage of the children:
 - the obligor's name; and,
 - the obligor's social security number; and,
 - the name(s) and social security number(s) of the children; and,
 - the obligor's home address; and,
 - the name and address of the obligor's place of employment; and,
 - whether the obligor has a health insurance policy, and if so, the policy name(s) and number(s), and name(s) of persons covered. (NOTE: This information may be available on the TEAMS THPL screen

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Reviewing Health
Insurance Orders

or on SEARCHS from the TEAMS interface,
as well as in the regular case file.)

- c. In either 1a or 1b above, if the support order specifies a separate medical amount (sum-certain) due, ensures SEARCHS accounting includes the medical amount in the total current support amount due in the case.
2. If the children are covered by the obligor's insurance, and all of the information is known, fills out the medical screens on SEARCHS, completes a form CS-520.3A, "Notice and Questionnaire Concerning Health Insurance," makes copies, places the original in the case record, and sends one copy to the custodial relative; if the children are eligible for Medicaid, also sends one copy to the CSED Medical Support Office. Monitors for continued coverage and compliance.
3. If a health insurance order exists, but the case record does not contain the required information concerning the health insurance, prepares and mails form CS-520.3A, "Notice and Questionnaire Concerning Health Insurance" to the obligor's last known address.

Tickles the case for the 24th calendar day thereafter and monitors return.
4. If the Notice and Questionnaire Concerning Health Insurance is returned on or before the 24th calendar day, reviews it and determines whether the required information is complete and whether it indicates the children are covered. If so, makes copies, places the original in the case record, mails one copy to the custodial relative, and if the children are eligible for Medicaid, sends the other copy to the CSED Medical Support Office. Fills out the MED screen for each child and monitors for continued coverage and compliance.

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Reviewing Health
Insurance Orders

5. If the Questionnaire is returned and insurance is not available, selects the appropriate event from EVM, tickles the case for 9 months to see if the situation has changed (see procedures in step 5c), and proceeds immediately as follows:
 - a. If the children are receiving Medicaid benefits **and** there is a medical support order (MSO) that requires the obligor to make payments to offset the cost of any medical assistance when insurance is not available, determines from information available on system whether other parent has insurance covering the children.
 - i. If so, determines whether premiums are paid by Medicaid. (NOTE: It may be necessary to contact the CSED Medical Support Office to answer this question.)
 - A. If yes, presumes insurance is not available at reasonable cost; sets up "Medicaid reimbursement" account on SEARCHS for the amount specified in the MSO. Pursues collection from the obligor as for child support.
EXCEPTION: Does not set up a Medicaid reimbursement account for an obligor who is receiving public assistance money.
 - B. If no, presumes insurance is available at reasonable cost; proceeds to step 5b.
 - ii. If not, attempts to identify other parent's employer from information available to CSED--SEARCHS medical screens, NAFDC application, Financial Affidavit--or by telephoning other parent.

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Reviewing Health
Insurance Orders

- A. If employer is identified and information on SEARCHS or other CSED data base shows employer offers insurance, presumes insurance is available at reasonable cost; proceeds to step 5b.
 - B. If employer cannot be identified, or information on SEARCHS or other CSED data base shows employer does not offer insurance, or other parent is found to be unemployed, presumes insurance is unavailable at reasonable cost; sets up "Medicaid reimbursement" account on SEARCHS for the amount specified in the MSO. Pursues collection from the obligor as for child support. **EXCEPTION:** Does not set up a Medicaid reimbursement account for an obligor who is receiving public assistance money.
- b. In all cases where there is an MSO with a Medicaid reimbursement provision in effect as in step 5a, upon becoming aware of a change in any of the required conditions for Medicaid reimbursement, immediately redetermines need for Medicaid reimbursement account and takes action to set up or close account as appropriate. "Required conditions" for Medicaid reimbursement are as follows:
- (1) The children are receiving Medicaid benefits
 - (2) Insurance is not available to the obligor at a reasonable cost
 - (3) Insurance is not available to the other parent at a reasonable cost.

NOTE: Account Closure. In closing a Medicaid reimbursement account, the caseworker must submit an adjustment for the months the account remained open following the change in

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Reviewing Health
Insurance Orders

conditions.

- c. Re-examines case in 9 months for change in obligor's insurance situation and, in cases with MSO requiring Medicaid reimbursement, for change in other applicable conditions.
- i. Change in Obligor's Situation. If the obligor's employer has begun offering a plan, or the obligor has changed employers, begins again at step 3. If insurance is determined to be available at reasonable cost, closes any Medicaid reimbursement account opened in step 5a (see NOTE in 5b).
- ii. Change in Medicaid Status of Children. If the children are no longer receiving Medicaid benefits, closes any Medicaid reimbursement account opened in step 5a (see NOTE in 5b). (NOTE: If the children have begun receiving Medicaid benefits, the determination of whether a Medicaid reimbursement account applies should have been made immediately in step 5b, without waiting for the 9-month review.)
- iii. Change in Other Parent's Situation (Cases with Medicaid Children). If availability of insurance at reasonable cost to other parent has changed (see step 5a to determine availability), redetermines need for Medicaid reimbursement account and takes action to open or close account if necessary; see NOTE in 5b.
- iv. No Change. If the situation is still the same, resets tickler for 9 months.
6. If the Questionnaire is not returned proceeds to section CS 520.7.

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Reviewing Health
Insurance Orders

7. If the Questionnaire is returned indicating insurance is available but the children are not covered, proceeds to section CS 520.7.
8. If the Questionnaire is returned indicating insurance is available but is too expensive, proceeds to section CS 520.5.

```
FIELD(8) • FIELD(9)IFNOTBLANK(10) • FIELD(10)ENDIF IFNOTBLANK(11) • FIELD(11)
ENDIF
```

whether it is available to me at a reasonable cost.

Employer Name: _____ Phone Number: _____

Employer Address: _____

Other Group Plan: _____ Phone Number: _____

Plan Administrator Address: _____

**STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

Obligor: **FIELD(13)**

Obligee: **FIELD(12)**

**FIELD(26)IFNOTBLANK(26)/ FIELD(26)
ENDIF**

Children: **FIELD(18)IFNOTBLANK(19),**

FIELD(19)ENDIF

IFNOTBLANK(20), FIELD(20)

)ENDIF IFNOTBLANK(21),

FIELD(21)ENDIF

IFNOTBLANK(22), FIELD(22)

)ENDIF IFNOTBLANK(23),

FIELD(23)ENDIF

IFNOTBLANK(24), FIELD(24)

)ENDIF IFNOTBLANK(25),

FIELD(25)ENDIF

**TEAMIFNOTBLANK(27)FIELD(27)ELSE
IFBLANK(27)NONEENDIF ENDIF**

INSURANCE INFORMATION

Insurance Co. Name: _____

Insurance Co. Address: _____

Name(s) and Social Security Number(s) of child(ren) covered by this insurance:

Group No: _____

Certificate No: _____

Beginning and end dates of coverage: _____

Total amount of premium: \$ _____

Amount of premium paid by you: \$ _____

Amount of child(ren)'s portion of the premium that is paid by you: \$ _____

Is your child(ren) eligible for Indian Health Services? _____

Are Indian Health Services available where your child(ren) live? _____

Date

Obligor's Signature

Department of Public Health and
Human Services

section:
MEDICAL SUPPORT ENFORCEMENT

CHILD SUPPORT ENFORCEMENT

subject:
Medical Hardship Review

SUPERSEDES: CS 520.5, Medical Support Enforcement--Medical Hardship Review, October 17, 1995.

REFERENCES: M.C.A. §§ 40-5-208 and 40-5-801 through 40-5-825.

POLICY: The medical hardship review process is designed to be used in cases where health insurance is available to the obligor through employment or other group but is not being obtained because it is too expensive. The use of these review procedures may avert the need for a hearing in many cases. History has shown the primary reason for medical hearing requests is the cost of insurance. The steps for using medical hardship review as a solution to this problem are outlined below.

The hardship review process does **not** include a determination of whether the insurance available to the obligor is cost-beneficial when combined with insurance available to, or already obtained by, the other parent. If a medical support order includes a cost-benefit condition for requiring insurance participation by both parents, the cost-benefit determination can be made only at a CSED medical hearing.

PROCEDURES:

RESPONSIBILITY

ACTION

Caseworker 1. If the obligor alleges the insurance available is too expensive, prepares and sends to the obligor a medical hardship review packet consisting of:

- form CS-520.5A, Obligor Cover Letter
- form CS-520.5B, Payor's Statement
- form CS-404.6A, Financial Affidavit.

NOTE: The caseworker must complete section I of the Payor's Statement before sending it with the packet.

Sends to the obligee form CS-520.5E, Letter to Obligee. Sets a tickler for 13 calendar days to

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Medical Hardship
Review

check for obligor and obligee response.

NOTE: If recent financial information and cost of insurance are readily available from the case file it is not necessary to send the above review packet; however, the obligee must still be sent notification of the request for review.

- a. If the financial affidavit and other required documents are not returned, and necessary information is not available from the case file, proceeds to section CS 520.7 for enforcement of the health insurance order.
 - b. If the information is returned in a timely manner or is available from the case file, proceeds to step 2.
2. Prepares form CS-520.5C, Medical Hardship Review Worksheet based on the financial information provided and any information received from the obligee.

NOTE: It may or may not be necessary to perform a "full" CS-520.5C hardship calculation in determining a medical hardship. The Worksheet gives criteria for proceeding to the full calculation when an initial determination is not possible, or when an initial determination is not acceptable because the obligor's circumstances have changed since the guidelines were last applied.

3. Prepares form CS-520.5D, Results of Medical Hardship Review, and other forms as indicated in steps 3b through 3f below. Sends Results and any enclosures to obligor, with copy of Results to obligee.

NOTE: If a hardship is granted the expiration date listed on the form is generally one year from the date the results are prepared; there may be variations according to special circumstances.

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Medical Hardship
Review

- a. If the obligor has been granted a medical hardship and no Notice of Intent to Enroll and Assess Health Insurance Penalty has been issued, proceeds to step 4.
- b. If the obligor has been granted a medical hardship and a Notice of Intent to Enroll and Assess Health Insurance Penalty has been served, prepares and executes form CS-520.7F, Motion and Order to Dismiss Notice of Health Insurance Penalty, and proceeds to step 4.
- c. If the obligor is granted a medical hardship after the Order to Enroll has been issued, prepares and executes form CS-520.7J, Order To Modify/Terminate Enrollment (terminating the enrollment) as in section CS 520.7. Proceeds to step 4 (this section).
- d. If the obligor has been denied a medical hardship and no Notice of Intent to Enroll and Assess Health Insurance Penalty (NOIEH) has been issued, prepares, and encloses with Results, form CS-520.3A, Notice and Questionnaire Concerning Health Insurance. Waits ten (10) days for voluntary enrollment. If the obligor does not enroll the children, proceeds to enforcement of the health insurance order as in section CS 520.7, beginning with issuance of the NOIEH.

If the obligor contacts the CSED and objects to the denial of the medical hardship, or claims the available insurance is not cost-beneficial with insurance the other parent already has in place, explains obligor may request medical hearing upon receipt of NOIEH, and proceeds immediately to section CS 520.7 without waiting the 10-day period.

- e. If the obligor has been denied a medical hardship and the Notice of Intent to Enroll and Assess Health Insurance Penalty (NOIEH)

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Medical Hardship
Review

has been issued but **no** Order to Enroll is in place, waits 10 days for voluntary enrollment and takes action according to the obligor's response below. If the obligor contacts the CSED and objects to the denial of the medical hardship, or claims the available insurance is not cost-beneficial with insurance the other parent already has in place, explains available options.

- i. If the obligor enrolls the children, prepares and executes form CS-520.7F, Motion and Order to Dismiss Notice of Health Insurance Penalty.
 - ii. If the obligor requests a hearing, proceeds as in section CS 520.7.
 - iii. If the obligor neither enrolls the children nor requests a hearing, proceeds as in section CS 520.7 beginning with motion for medical penalty hearing **and** issuance of Order to Enroll.
- f. If the obligor has been denied a medical hardship at the caseworker level and an Order to Enroll is in place, enforces the Order to Enroll as in sections CS 520.7 and 520.9. (There is no further opportunity for a hearing at this point. If the Obligor wishes to dispute the hardship determination or claim the available insurance is not cost-beneficial with insurance the other parent already has in place, the obligor must bring a new action in district court.)
4. Upon a granting of a medical hardship, checks to see if **both** of the following conditions apply:
- (1) The children are receiving Medicaid benefits
 - (2) There is a medical support order that requires the obligor to make payments to offset the cost of medical assistance.

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Medical Hardship
Review

- a. If both conditions apply, follows procedures in section CS 520.3 for determining whether insurance is available to the other parent, and for opening and collecting Medicaid reimbursement account if applicable.
 - b. If only one or neither condition applies, takes no further action in this step, but monitors case for any change in circumstances that would require action in step 4a.
5. Whenever a medical hardship is granted and regardless of the outcome of step 4, sets tickler for 9 months to check case status. After 9 months if no change in circumstances has occurred, resets the tickler. If a change in circumstances has occurred (for example, the obligor has got a new job, or the employer has engaged the services of a different insurance company with more reasonable rates), returns to section CS 520.3 and proceeds accordingly.

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

FIELD(9) • FIELD(10)IFNOTBLANK(11) • FIELD(11)ENDIF IFNOTBLANK(12) • FIELD(12)ENDIF
FIELD(7) FIELD(8)

Case Number FIELD(2)

In Re the Medical Support Obligation Of:

FIELD(14)

Obligor

Obligee

FIELD(13)

Children

FIELD(19)IFNOTBLANK(20), FIELD(20)

ENDIF IFNOTBLANK(21), FIELD(21)

ENDIF IFNOTBLANK(22), FIELD(22)

ENDIF IFNOTBLANK(23), FIELD(23)

ENDIF IFNOTBLANK(24), FIELD(24)

ENDIF IFNOTBLANK(25), FIELD(25)

ENDIF IFNOTBLANK(26), FIELD(26)

ENDIF

Dear Parent:

The Child Support Enforcement Division (CSED) has the authority to impose a health insurance penalty against you. You have requested a review of your financial circumstances to determine whether health insurance is available to you at a reasonable cost.

qualify for a review, the enclosed document(s) must be completed and signed in the presence of a notary public. Return the completed and notarized document(s) to this office at the above address within ten days.

If a Financial Affidavit is enclosed, you must also send a copy of your latest federal income tax return, including schedules, and a copy of your pay stubs for the past three months. If we do not receive all of the requested documentation within ten days, your review will not be processed.

Using the information you provide, the CSED will determine whether health insurance is available to you at a reasonable cost.

If the CSED determines that health insurance is available to you at a reasonable cost, a penalty may be assessed against you for failing to obtain and maintain health insurance. Health insurance penalties may not exceed \$25.00 per day, for each day that health insurance coverage is not obtained and maintained.

If the CSED determines that health insurance is not available at a reasonable cost, no penalty will be assessed and the CSED will not issue an Order to Enroll to your current employer so long as your financial situation remains the same. However, if any of your children is receiving or begins receiving Medicaid benefits, you may be required to begin paying any amount listed in your medical support order for Medicaid recipient children.

October 24, 1996

FIELD(4), FIELD(5)

IFNOTBLANK(27)Enclosures:ELSE IFNOTBLANK(28)Enclosures:ENDIF ENDIF
IFNOTBLANK(27)Payor's StatementENDIF
IFNOTBLANK(28)Financial AffidavitENDIF

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

PAYOR'S STATEMENT

NOTICE TO PAYOR: The Child Support Enforcement Division (CSED) must determine whether health insurance covering the following individuals is available through you at a reasonable cost to the employee. Please complete section II of this form, and return it to the employee listed below.

SECTION I: TO BE COMPLETED BY THE CSED

Name of Employee: _____
Employee's Social Security Number: _____
Names of Children: _____

SECTION II: TO BE COMPLETED BY PAYOR

The following questions concern the insurance available through you to the above-named employee:

Name of Employer's Business: _____
Name of Union: _____
Insurance Co. Name: _____
Insurance Co. Address: _____

Name(s) and Social Security Number(s) of persons related to the employee that are covered by this insurance:

Group No: _____
Certificate No: _____
Beginning and end dates of coverage: _____
Amount of deductible: \$ _____

Indicate types of coverage available:

- | | | |
|------------------------------------|--|--|
| ☐ Physician | ☐ Outpatient | ☐ Accident Only |
| ☐ Dental | ☐ Personal Care | ☐ Hospital |
| ☐ Optical | ☐ Medicare deductible | ☐ Nursing Home |
| ☐ Drug | ☐ and co-insurance | ☐ Home Health |

Case Number: _____

CS-520.5B
(New 10/95)

Indicate the amount the employee must pay each month to keep or to add health insurance coverage in the following situations:

- \$ _____ a. Employee and children named in section I above.
\$ _____ b. Only children named in section I above.
\$ _____ c. Only the employee.
\$ _____ d. Employee and family.
\$ _____ e. Employee and spouse.

Please attach your insurance company's rate schedule if available.

Date

Payor's Signature, Position

State of _____)
County of _____) ss.

Before me, a Notary Public for this State, personally appeared the payor, known by me to be the person named in the foregoing PAYOR STATEMENT, and executed the same in my presence.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day, month and year hereinabove written.

(SEAL)

NOTARY PUBLIC

Residing at: _____

My Commission Expires: _____

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

Case Number: _____

_____ Obligor

_____ Obligor

_____ Children

MEDICAL HARDSHIP WORKSHEET

1. Was the support obligation determined according to the Montana Child Support Guidelines?

Yes - proceed to number 2.

No - proceed to number 4.

2. Is the guideline worksheet available?

Yes - proceed to number 3.

No - proceed to number 4.

3. Was the cost of insurance used in the guideline determination?

Yes - obligor does not qualify for a medical hardship unless there has been a change in his/her income or insurance premium since the child support order was entered.

- If there's been a change, proceed to number 4.

- If no change, send obligor a Results of Medical Hardship Review denying the hardship request.

No - Is the premium partially or entirely paid by the employer or other group organization?

Yes - obligor does not qualify for a medical hardship unless there has been a change in his/her income or insurance premium since the child support order was entered.

- If there's been a change, proceed to number 4.

- If no change, send obligor a Results of Medical Hardship Review denying the hardship request.

No - complete the following:

a. Enter monthly support obligation x .25 (25%) _____

b. Enter monthly insurance premium _____

- c. Has there been a change in the obligor's income or insurance premium since the child support order was entered? ☐ Yes ☐ No

If line b is less than or equal to line a, and line c is no, the obligor does not qualify for a medical hardship. Send obligor a Results of Medical Hardship Review denying the hardship request.

If line b is greater than line a, and line c is no, the obligor qualifies for a medical hardship. Send obligor a Results of Medical Hardship Review granting the hardship request. NOTIFY THE OBLIGEE.

If line b is less than or equal to line a, and line c is yes, proceed to number 4.

If line b is greater than line a, and line c is yes, proceed to number 4.

4. Complete a regular hardship adjustment worksheet. See CS-510.5. (If the obligor wants to have subsequent family members considered, spousal income must be included.)

- a. Enter amount from line 27 of Hardship Adjustment Worksheet _____

If line 4a is less than line 3b the obligor qualifies for a medical hardship. Send obligor a Results of Medical Hardship Review granting the hardship request. NOTIFY THE OBLIGEE.

If line 4a is equal to or greater than line 3b the obligor does not qualify for a medical hardship. Send obligor a Results of Medical Hardship Review denying the hardship request and proceed with appropriate enforcement action.

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

Case Number: _____

In Re the Medical Support Obligation
of: _____

Obligee

Obligor

Children

RESULTS OF MEDICAL HARDSHIP REVIEW

To the Above-Named Obligor:

The Child Support Enforcement Division (CSED) conducted a review to determine whether health insurance is available to you at a reasonable cost. If granted, the medical hardship would offer you temporary relief from the requirement contained in your child support order that you obtain and maintain health insurance for the above-named children. Any resulting hardship determination does not change the underlying medical support order but rather offers temporary relief from CSED enforcement measures. The results of the review follow:

☐ **If checked, Medical Hardship granted.** Insurance is not available to you at a reasonable cost. You are granted a temporary medical hardship which will expire on _____, unless before that date you request a redetermination of the hardship. It may also terminate sooner upon a change in your circumstances. The CSED will not proceed at this time to assess a penalty against you or to issue an Order to Enroll to your employer. If an Order to Enroll has been issued to your employer, it will be terminated. **PLEASE TAKE NOTE: If any of your children is receiving or begins receiving Medicaid benefits, you may be required to immediately begin paying to the CSED any amount listed in your medical support order for Medicaid recipient children. This Medicaid offset payment is in addition to any child or spousal support payment already required.**

☐ **If checked, Medical Hardship denied.** Insurance is available to you at a reasonable cost. There is not sufficient evidence to support your allegation that a financial hardship will exist for you if medical insurance is obtained and/or maintained for the above-named children. The CSED will proceed with enforcement of your medical support or health insurance order as follows:

☐ The Order to Enroll that is presently in place with your employer will remain in effect.

- ☐ Unless you voluntarily enroll your children in the health insurance plan available to you through your employer or other group insurance and confirm the enrollment by returning the enclosed Notice and Questionnaire within ten days, a legal notice will be served on you. This notice imposes a penalty of up to \$50.00 for each day you failed to obtain and maintain health insurance and provide information about insurance coverage to the Child Support Enforcement Division. It also allows the CSED to issue an order to your employer, union or other group to enroll your children in an available health insurance plan.

- ☐ Unless a hearing on the Notice of Intent to Enroll and Assess Health Insurance Penalty is timely requested, or you voluntarily enroll the above-named children in a health insurance plan, an Order to Enroll will be sent to your employer or plan administrator and the CSED will proceed with assessment of a penalty against you for the amount stated in the notice. You have ten (10) days to resolve this issue with the CSED.

Investigator, Child Support Enforcement

Date

**STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

**FIELD(9) • FIELD(10)IFNOTBLANK(11) • FIELD(11)ENDIF IFNOTBLANK(12) •
FIELD(12)ENDIF**

FIELD(7) FIELD(8)

Case Number **FIELD(2)**

FIELD(13)

In Re the Medical Support Obligation of:

Obligee

FIELD(18)

Obligor

FIELD(19)IFNOTBLANK(20), FIELD(20)ENDIF IFNOTBLANK(21), FIELD(21)ENDIF IFNOTBLANK(22), FIELD(22)ENDIF IFNOTBLANK(23), FIELD(23)ENDIF IFNOTBLANK(24), FIELD(24)ENDIF IFNOTBLANK(25), FIELD(25)ENDIF IFNOTBLANK(26), FIELD(26)ENDIF

Children

To **FIELD(13):**

PLEASE TAKE NOTICE: The Child Support Enforcement Division (CSED) has the authority to issue an Order to Enroll to the obligor's payor requiring the payor to enroll the above-named children in a health insurance plan. The obligor has requested a financial review to determine whether health insurance is available at a reasonable cost.

The CSED will use information provided by the obligor to conduct the health insurance review and determine whether health insurance is available at a reasonable cost.

If the CSED determines that health insurance is available at a reasonable cost, an Order to Enroll may be issued to the obligor's payor, or any Order to Enroll which is currently in place will remain in effect.

If the CSED determines that health insurance is **not** available at a reasonable cost, no Order to Enroll will be issued, and any Order to Enroll which is currently in place will be terminated. This means that the obligor will not provide health insurance coverage for the above-named children.

If you have any information that may help the CSED in determining whether

health insurance is available at a reasonable cost, please contact the CSED immediately at the number at the top of this letter.

October 24, 1996

FIELD(4), FIELD(5)

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
MEDICAL SUPPORT ENFORCEMENT

subject:
Enforcing Health Insurance
Orders

SUPERSEDES: CS 520.7, Enforcing Health Insurance Orders, October 17, 1995.

REFERENCES: M.C.A. §§ 40-5-208 and 40-5-801 through 40-5-825.

POLICY: The CSED is responsible for enforcing **medical support orders** and **health insurance orders** in all IV-D cases. Medical support orders are orders entered under the Montana Medical Support Reform Act (the Act); they contain health insurance requirements as well as other medical support provisions. Health insurance orders are orders entered prior to implementation of the Act; they do not contain all of the provisions of medical support orders but are enforceable under the Act. (The CSED is also responsible for enforcing medical support dollar amounts specified in child support orders, but these amounts are treated as child support for enforcement purposes, and the procedures in this section do not apply.)

The CSED enforces medical support and health insurance orders only against the obligor. Although medical support orders generally obligate both parents, the CSED does not enforce them against the obligee, unless the obligee is also an obligor in another case. The CSED must enforce either type of order against the obligor, except in non-AFDC cases where the obligee declines medical support enforcement services and there is no Medicaid eligibility.

The Montana Medical Support Reform Act provides for a penalty of up to \$25 for each day that a parent knowingly violates a medical support order, a health insurance order, a provision of the Act, or a rule adopted under the Act. Pursuant to this authority the CSED enforces the health insurance aspects of medical support by assessing a penalty ("health insurance penalty") when either of the following situations occurs:

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ENFORCEMENT

subject: Enforcing Health
Insurance Orders

- (1) The obligor violates a medical support or health insurance order by failing to obtain and maintain health insurance as ordered
- (2) The obligor violates a provision of the Act by failing to provide information about health insurance to the CSED as requested.

Consequently, an obligor may incur a combined health insurance penalty of up to \$50 per day for non-compliance with a medical support or health insurance order and subsequent CSED notices. The CSED enforces health insurance regardless of whether the obligor is receiving public assistance money.

NOTE: Enforcement of Duties Between Parents. The CSED does not at this time enforce provisions relating to sharing or reimbursement of medical expenses or access to coverage between parents. Either party may, however, seek a judgment for any costs or penalties associated with these provisions in district court.

Prior to beginning the health insurance penalty process, the CSED caseworker should take reasonable steps to get the required information or cooperation from the obligor or the obligor's employer or other group plan. These steps include telephone calls or a letter advising the obligor of the consequences of failure to cooperate. The CSED initiates the health insurance penalty process by serving the obligor with a Notice of Intent to Enroll and Assess Health Insurance Penalty (NOIEH). The obligor has an opportunity to request an administrative hearing within 10 days. The **health insurance penalty portion** of the Notice must be dismissed if the obligor proves that insurance was in effect for the notice period. The health insurance penalty cannot be imposed without a hearing, so if in response to the Notice the obligor does not request a hearing, and does not take the necessary steps to avoid the penalty, the CSED orders a hearing by entering a motion of its own.

Health insurance penalties can be collected through the income withholding process (sections CS 510.1 through CS

section: MEDICAL SUPPORT
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Insurance Orders

510.20), through a Warrant for Dstraint (section CS 507.3), or through other lawful means.

Montana law also allows for punishment by contempt when the obligor fails to obtain health insurance or provide required information. The resulting contempt penalty is not considered a "health insurance penalty" for purposes of this section--see section CS 503.5, Administrative Civil Contempt, for procedures for pursuing a contempt. CSED policy permits assessment of either the health insurance penalty or the contempt penalty, but not both, for a given failure or time period. In practice the contempt penalty is used only in exceptional cases, where there is reason to believe it will be more effective in gaining current or future compliance than the regular health insurance penalty. (For purposes of health insurance enforcement, the CSED generally allows one "count" of contempt for each month the obligor fails to obtain or maintain health insurance, and one count for each month the obligor fails to provide information to the CSED.)

PROCEDURES:

RESPONSIBILITY

ACTION

Caseworker

1. If an obligor has failed to get and keep health insurance, has failed or refused to provide information required by a court or administrative order, has failed to respond to a Notice issued under section CS 520.3, or if the CSED learns that the obligor does not have insurance, has refused to provide coverage, or has allowed it to lapse, reviews the case file record and determines if the obligor's employer or other group plan is known:
 - if known, proceeds to step 2; or,
 - if not known, skips to step 3.
2. If the obligor's employer or other group plan is known, checks SEARCHS or other CSED data base for employer-insurance cross reference. (It may be necessary to contact the CSED Medical Support

section: MEDICAL SUPPORT
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subject: Enforcing Health
Insurance Orders

Office to obtain this information.) If no conclusive information is obtained, contacts the employer or plan administrator by telephone or letter, and attempts to obtain information concerning health insurance coverage.

- a. If obligor is found to have insurance coverage for the children, makes appropriate SEARCHS case note, provides required information to CSED Medical Support Office and to obligee using form CS-520.3A, Notice and Questionnaire Concerning Health Insurance, and enters all information in appropriate field on MED screen for each child covered. Monitors for continued coverage and compliance.
 - b. If insurance is found to be unavailable, makes appropriate SEARCHS case note, and monitors for any change in situation.
 - c. If neither step 2a nor 2b applies, proceeds to step 3.
3. Contacts the obligor by telephone or letter, and attempts to:
- obtain information concerning health insurance coverage; or,
 - secure health insurance coverage for the children with the cooperation of the employer or plan administrator; or
 - reinstate lapsed health insurance coverage with the cooperation of the employer or plan administrator; or,
 - any appropriate combination of the above.

If contact reveals insurance coverage is in place or is unavailable, proceeds as in step 2a or 2b. If not, proceeds to step 4.

4. Before proceeding with formal enforcement, examines the case record and determines if IV-D action is required to enforce child support obligations other

section: MEDICAL SUPPORT
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subject: Enforcing Health
Insurance Orders

than health insurance. (NOTE: Whenever practical, the enforcement of health insurance orders should be coordinated with other enforcement activities.)

Calculates medical penalty for formal notice as follows: For each failure that applies, available penalty period begins on third day following date of mailing of Notice and Questionnaire and continues through day before issuance of notice package. (Failures for penalty purposes are (1) failure to obtain or maintain insurance and (2) failure to provide requested information to the CSED about the insurance.)

Prepares a notice package consisting of:

- form CS-401.3C, Praecepte (to the Sheriff of the county where the obligor is to be served), or form CS-405.1, Acknowledgement of Receipt of Notice and Waiver of Service, and
- form CS-520.7A, Notice of Intent to Enroll and Assess Health Insurance Penalty, and
- form CS-520.7K, Request for Medical Penalty Hearing, and
- form CS-520.3A, Notice and Questionnaire Concerning Health Insurance.

Copies documents, retains one copy of each in the case file record, tickles for 30 days for Sheriff's return or acknowledgment of service.

5. Secures service of the notice package by:

- personal service by the Sheriff, or
- acknowledgment of service.

Upon receipt of Sheriff's return or obligor's acknowledgment of service, files proof-of-service document in case record, and tickles for 11th working day after service.

NOTE -- CALCULATING RESPONSE TIME: Within 10 days of service, a written request for hearing from the

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Enforcing Health
Insurance Orders

obligor must be received by the Hearings Office in Helena. Excluding the day of service, the response time expires at the end of the 10th consecutive working day.

6. On the 11th working day, reviews the case file record and checks with a Hearings Assistant to determine if a request for hearing was timely received. If so, skips to step 7. If not, takes action as follows:
 - a. If no request for hearing was received and the obligor made no contact within ten days, takes concurrent action in steps i and ii below:
 - i. Prepares form CS-520.7B, Motion for Medical Penalty Hearing, listing obligor in certificate of mailing. Sends original to the Office of the Administrative Law Judge (OALJ), and one copy to the obligor; retains copy for case record. Prepares hearing exhibits including copy of medical support or health insurance order, Notice of Intent to Enroll and Assess Health Insurance Penalty, and proof of service. Prepares testimony as needed (see hearing issues in step 7); attends hearing, awaits hearing Decision and Order, and proceeds as directed.
 - ii. If insurance is known to be available, also prepares and executes form CS-520.7I, Order to Enroll, as in step 8. If employer or availability of insurance is unknown, proceeds with Order to Enroll as soon as necessary information is available.
 - b. If the obligor returns the Notice and Questionnaire indicating insurance has been obtained, or insurance is not available through present employment, prepares form CS-

section: MEDICAL SUPPORT
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subject: Enforcing Health
Insurance Orders

520.7F, Motion and Order to Dismiss Notice of Health Insurance Penalty.

NOTE: This is a change. This Motion and Order will dismiss just the health insurance penalty portion of the Notice, still allowing the CSED to issue form CS-520.7I, Order to Enroll at some time in the future if necessary. Once the obligor is in an enrollable status, the obligor is always subject to an Order to Enroll if insurance is not provided on a voluntary basis. To dismiss the Notice because of service on the wrong individual or upon discovering there is no provision to obtain and maintain insurance in the order, the appropriate form is CS-401.3F, the CSED's standard Motion and Order to Dismiss Administrative Notice, which will dismiss the entire Notice including the enrollment portion.

- c. If the obligor returns the Notice and Questionnaire indicating insurance is available but too expensive, sends medical hardship review packet to the obligor, sets tickler for ten days for required documents to be returned properly completed, and proceeds with medical hardship review as in section CS 520.5.
 - d. If the obligor returns the Notice and Questionnaire indicating insurance is available but the obligor's children have not been added to the policy, contacts obligor to resolve the issue informally or through the medical hardship review process (section CS 520.5). If resolution is not possible (see step 7), follows procedures for concurrent action in steps 6a(i) and (ii).
7. If the obligor requests a hearing, tries to resolve the problem informally or through the medical hardship review process (section CS 520.5).

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ENFORCEMENT

subject: Enforcing Health
Insurance Orders

If no resolution of the problem is possible (for example, insurance is available through the obligor's employment or other group plan and the obligor's earnings are too high for a medical hardship, but the obligor still feels the available coverage is too costly, claims the coverage is not cost-beneficial given the insurance the obligee already carries, or has some other objection to carrying the insurance), prepares exhibits and testimony and attends the hearing.

Issues at a medical penalty hearing are limited to

- whether the person served with the NOIEH is the obligor,
- whether the duty imposed by the medical support order or health insurance order still applies,
- whether any part of the NOIEH is incorrect (period of penalty, failure to obtain and maintain insurance, failure to provide information),
- if the NOIEH is correct, whether health insurance is available at a reasonable cost,
- if the NOIEH is correct, whether the penalty should not be applied because the obligor has now obtained health insurance,
- unless an Order to Enroll is already in place, whether a hardship denial was appropriate,
- if the medical support order allows, whether the available health insurance is cost-beneficial combined with insurance provided by the other parent.

Waits for the Decision and Order from the Hearing Officer and proceeds as directed.

8. Immediately upon the occurrence of any of the following events (after service of the NOIEH), proceeds with an Order to Enroll as described below:

section: MEDICAL SUPPORT
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Insurance Orders

- (1) Hearing Officer issues Decision and Order following hearing requested by obligor, and Decision and Order allows for enrollment
- (2) Motion for Medical Penalty Hearing is issued and employer and availability of insurance are known
- (3) Medical hardship has been denied and 10 days have elapsed during which obligor has not requested hearing or enrolled children (and Order to Enroll is not already in place).
- (4) After voluntarily enrolling children, obligor has allowed insurance to lapse, and response time for NOIIEH has passed.

Prepares and sends the following package by certified mail, return receipt requested, to the employer or plan administrator:

- form CS-520.7I, Order to Enroll, and
- form CS 520.7R, Acknowledgment and Response to Enrollment Order.

Copies documents, retains one copy of each in the case file record, sends one copy of the Order to Enroll to the obligor and one copy to the obligee, and tickles for 15 days for return of postal receipt.

If certified mail is refused by addressee, arranges for personal service by Sheriff, using form CS-401.3C, Praeipie (to Sheriff of county where employer or plan administrator is to be served).

Upon return of postal receipt (or Sheriff's return), files return document in the case record, and tickles for 30 days after service to check for employer/plan administrator response.

NOTE: Service on Plan Administrator. If the payor is different from the plan administrator (insurance carrier) the Order to Enroll must be served on both. (EXAMPLE: The obligor is employed and the deduction for insurance is handled by the employer

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Enforcing Health
Insurance Orders

but the insurance is available through the union; both the employer and the union must be served with the Order to Enroll.)

9. If the hearing in step 6a or step 7 results in an order for a health insurance penalty, takes action as follows:
 - a. Enters the medical penalty order on SOD and selects the appropriate event from the EMS FEES/FINES menu or the MED menu and enters the amount of the penalty imposed. This should automatically create an account.
 - b. Pursues collection of the penalty through any appropriate enforcement action, including income withholding, warrant for distraint, federal tax offset, state tax or bad debt offset, seizure and sale of real and personal property (upon consultation with a CSED staff attorney), or any other appropriate remedy.

NOTE: Dismissing Penalty at Case Closure. If at the time of case closure the penalty has not been collected in full and the health insurance obligation for the child has ceased (for example, the child has emancipated, died, or been adopted), the caseworker should work with the CSED staff attorney to prepare a special motion to dismiss the health insurance penalty. **EXCEPTION:** If circumstances are such that the health insurance obligation would be reinstated or the CSED would begin collecting child support arrears if the case were reopened, the penalty should not be dismissed.

10. Following resolution of NOIEH, monitors case for any change in enrollment or penalty status and takes action in step a, b, or c below as needed.
 - a. If the children were voluntarily enrolled (no Order to Enroll was issued) and the obligor allows the insurance to lapse, sends Order to Enroll as in step 8 (see NOTE following step

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Enforcing Health
Insurance Orders

10b).

- b. If the obligor switches employers, reinitiates medical support enforcement by sending new Notice and Questionnaire; follows applicable procedures in this section (see NOTE below).

NOTE: Enrollable Status. In a and b above, because the obligor was previously served with a Notice of Intent to Enroll and Assess Health Insurance Penalty, the obligor is already in an enrollable status. This means the CSED may issue an Order to Enroll without notice to the obligor whenever enrollment is appropriate (insurance is available, or insurance may be available and the obligor fails to provide information as requested).

NOTE: Obligor Not Enrollable Under Notice of Failure. Previous service of old form CS-520.7A, Notice of Failure to Obtain and Maintain Health Insurance on the obligor is not sufficient to place the obligor in an enrollable status.

- c. At the caseworker's discretion, if a penalty becomes appropriate for any failures following resolution of the NOIEH, a new NOIEH may be issued. The penalty period for a second or subsequent NOIEH must begin on a date not included in a previous penalty period.
11. Upon receipt of appropriate enrollment and insurance information from the employer or plan administrator, updates SEARCHS MED screens, and sends insurance information to the obligee and CSED Medical Support Office in AFDC cases, and to the obligee in non-AFDC cases.

If the employer or plan administrator fails to comply with the Order to Enroll, takes action in step 11a or 11b--whichever is more appropriate. (NOTE: A contempt action may be more appropriate if

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Enforcing Health
Insurance Orders

it will result in a greater penalty, or if a contempt against the employer for failure to withhold income is also pending.)

- a. Civil contempt--follows procedures in section CS 503.5, Administrative Civil Contempt, to obtain penalty of up to \$500 for each count of contempt. (For purposes of estimating the amount of a contempt penalty, allow one "count" of contempt for failing to enroll the children or maintain enrollment as ordered, one count for failing to provide information to the CSED, and (if the children are enrolled) one count for each pay period the necessary premium is not withheld.)
- b. Enrollment penalty--follows procedures in section CS 520.9, Enforcing Health Insurance Orders--Payor/Plan Administrator, to obtain penalty of up to \$25 for each day the employer or plan administrator fails to comply with a requirement of the Order to Enroll. (For purposes of assessing an enrollment penalty, the CSED recognizes three types of non-compliance: failure to enroll the children or maintain enrollment; failure to provide information to the CSED; and (if the children are enrolled) failure to withhold the necessary premiums. The total penalty, therefore, can be up to \$50 per day for failing to comply with the Order to Enroll. Penalty days begin on the 31st day after the date of service of the Order to Enroll.)

NOTE: In addition to the penalty in step 11a or 11b, the CSED hearing officer may also impose a civil penalty of not more than \$150 on a payor that knowingly violates the provisions of a CSED Order to Enroll.

12. If after the Order to Enroll is in place the obligor contacts the CSED alleging the premium being deducted from earnings is causing financial

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Enforcing Health
Insurance Orders

hardship, conducts medical hardship review according to procedures in section CS 520.5.

13. When an Order to Enroll is in place, upon receiving tickler prior to emancipation of an enrolled child, notifies obligee (and other parent in third-party case) the CSED will terminate enrollment of the child.
14. When an Order to Enroll is in place and the conditions in 14a or 14b below apply, prepares and issues package to employer or plan administrator containing
 - form CS-520.7J, Order to Modify/Terminate Enrollment, and
 - form CS-520.7R, Acknowledgment and Response to Enrollment Order.
- a. When an unenrolled child is identified for whom the obligor is ordered to provide medical support and who was included in an NOIEH served on the obligor, orders employer or plan administrator to **add** the child to the health insurance plan. (If the child has not been included in a NOIEH, issues NOIEH as in step 4 and follows procedures in this section as applicable.)
- b. When the obligor is no longer required to provide medical support for a child (there is no longer a support obligation, or a medical hardship has been granted, or a medical penalty hearing has resulted in an order to terminate the enrollment), orders employer or plan administrator to **terminate** enrollment of the child. (This procedure may be used to remove certain children from the plan or to terminate the enrollment of all of the children.)

**STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

**FIELD(9) • FIELD(10)IFNOTBLANK(11) • FIELD(11)ENDIF IFNOTBLANK(12) •
FIELD(12)ENDIF**

FIELD(7) FIELD(8)

In Re the Medical Support Obligation of: Obligee as of Notice Date:

FIELD(14)

FIELD(13)

Obligor

Case Number: **FIELD(2)**

Children:

**FIELD(19)IFNOTBLANK(20), FIELD(
20)ENDIF IFNOTBLANK(21), FIELD(
21)ENDIF IFNOTBLANK(22), FIELD(
22)ENDIF IFNOTBLANK(23), FIELD(
23)ENDIF IFNOTBLANK(24), FIELD(
24)ENDIF IFNOTBLANK(25), FIELD(
25)ENDIF IFNOTBLANK(26), FIELD(
26)ENDIF**

**NOTICE OF INTENT TO ENROLL AND ASSESS
HEALTH INSURANCE PENALTY**

State law requires you to get and keep health insurance coverage for the children named above. The law also requires you to provide the Child Support Enforcement Division (CSED) with information about this coverage. The CSED is enforcing this duty according to MCA§40-5-208 and MCA Title 40, Chapter 5, Part 8.

The CSED has reason to believe that you failed to:

IFNOTBLANK(35)

get and keep health insurance coverage required by an administrative order issued by the CSED and abstracted in **FIELD(30)** County, Cause Number **FIELD(27)**, filed **FIELD(28)**;

ENDIF IFNOTBLANK(36)

get and keep health insurance coverage required by a court order, issued by the **FIELD(29)** of **FIELD(30)** County, Montana, in Cause Number **FIELD(27)**, dated **FIELD(28)** ;

ENDIF IFNOTBLANK(37)

get and keep health insurance

coverage required by court or administrative order, issued by the FIELD(38) of FIELD(39), in Cause Number FIELD(27), dated FIELD(28);

ENDIF IFNOTBLANK(40)

provide information about the health insurance coverage.

ENDIF The CSED intends to charge you a total penalty of \$FIELD(41) for the period from FIELD(42). The CSED can collect the penalty by income withholding, warrant for distraint, state and federal income tax refund intercept, and by any other lawful means. In addition to, or in place of the above penalty, the CSED may charge you with contempt for the above failure(s), and may assess a separate penalty of not more than \$500 for each count of contempt found.

NOTICE: The CSED has the authority to issue an order to any payor or subsequent payor of income, and to the health insurance plan administrator, if different, to enroll the above-named children in any health insurance plan that is or may become available to you. The premium for this health insurance coverage will be withheld from money paid to you by the payor, in addition to any child support obligation that is currently deducted.

The CSED may issue the Order to Enroll if any of the following events occur:

- health insurance coverage for the above-named children has lapsed; or
- you fail to obtain and provide proof of health insurance coverage for the above-named children in a timely manner.

If any of these events occur, the CSED may issue an Order to Enroll at any time without further notice to you.

If you **AGREE** that you failed to obey state law as stated in this notice, you can avoid additional penalties by immediately getting health insurance coverage for the children and returning the enclosed questionnaire.

If you **DISAGREE** with all or any part of this notice, you must request a hearing or request a review to determine whether health insurance is available to you at a reasonable cost. At a hearing, you will have to show cause why the CSED should not assess the penalties stated in this notice.

October 25, 1996

FIELD(4), Investigator

YOUR RIGHTS AND DUTIES REGARDING THIS NOTICE

1. You have the right to raise defenses to this notice. Your defenses may include one or more of the following:

- you got or kept health insurance during all or part of the period covered in the notice;
- you provided information about the insurance coverage;
- your duty to get and keep health insurance never existed, was changed or was ended;
- you are not the obligor;
- you have applied for insurance coverage for your children;
- health insurance is available to you but it is not cost-beneficial combined with insurance provided by the other parent, and your medical support order allows this defense;
- health insurance is not available to you at a reasonable cost;
- the time period for which the CSED charged you a penalty is incorrect.

To raise your defenses, you must contact the investigator named above to discuss them, and to provide documented proof. You and the investigator may be able to resolve this matter without a hearing.

Informal discussions with the CSED do NOT extend the time allowed for requesting a hearing.

2. You have the right to an administrative hearing to contest all or any part of this notice.
3. You have a right to be represented by an attorney. In any action before the CSED, you have a right to appear by yourself or with an attorney. You may also choose to have an attorney appear for you. If you wish to have an attorney accompany or represent you, it is your responsibility to pay any fee(s) charged for such representation.

HOW TO REQUEST A HEARING

Complete the attached "Request for Medical Penalty Hearing" form. Send or deliver it, along with any documents you want considered at the hearing, to the CSED, Office of the Administrative Law Judge (OALJ). The OALJ must receive it within ten (10) days after the date you received this notice. The back of the hearing request

contains information about the procedures you must follow to protect your hearing rights. **Read the information carefully. Failure to follow instructions may cause you to lose your right to a hearing.**

The OALJ will inform you in writing of the date, time, and place of hearing. The Notice of Hearing and all other documents will be mailed to the address you provide. You must inform the OALJ immediately if you change your address.

LEGAL BASIS OF THIS NOTICE

The CSED has a right under MCA Title 40, Chapter 5, Part 8 to order you to get and keep health insurance coverage when it is available; to order any payor of income or health benefit plan administrator to enroll the above-named children in a health insurance plan available to you; and to order the payor to deduct the insurance premiums from any amounts owed to you by the payor.

If you have any questions, need additional information, or wish to settle this case informally, please contact the CSED at the above address or phone number.

**FOR A STATEMENT OF YOUR RIGHTS AND RESPONSIBILITIES WHEN
A HEARING IS REQUESTED, SEE THE ATTACHED "REQUEST FOR MEDICAL
PENALTY HEARING" COMMENT**

ASSIGN(saveFlag;1).COMMENT(Specify that this document needs to be saved)

**STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

Return Request to:

Child Support Enforcement Division
Office of the Administrative Law Judge
111 North Jackson
Helena, Montana 59620

REQUEST FOR MEDICAL PENALTY HEARING

I request a hearing. I will be represented/accompanied by:

Name: _____ Phone Number: _____

Address: _____

This person ☐ is ☐ is not an attorney. If this person is an attorney, I will have him/her submit a notice of representation to the Office of the Administrative Law Judge. I understand all correspondence about the hearing will be sent to me until my attorney submits the notice.

My reasons for requesting a hearing are:

Signature: _____ Date: _____

Social Security No: _____ Phone Number: _____

Address: _____ Phone Number Where I Can be Reached

_____ For Hearing: _____

You may settle your case informally without need for a formal hearing, even if the hearing officer denies your hearing request. To do so, contact the CSED at (406) 442-7278 or write to

Informal discussions do not extend the time allowed to request a hearing.

FOR CSED USE ONLY

Obligor: _____
Case Number: _____
Region: _____
Hearing Exhibits Due: _____

Obligee: _____
Investigator: _____
Date of Service: _____
Hearing to be Held By: _____

MEDICAL PENALTY HEARING INFORMATION

You have the right to a hearing before an independent administrative hearing officer. Facts which may affect your hearing rights are described below:-

1. Hearing requests must be received within the time specified in the notice.
2. The request for hearing must include your name, social security number, your current address, and telephone number. If you do not have a telephone, you must provide a number where you can be reached for the hearing. This may be the number of a neighbor, friend, relative, employer or other person.
3. The request for hearing must be a short statement of your reason(s) why you are requesting a hearing. You have the right to raise defenses relevant to your medical support obligation at this hearing. Your defenses may include one or more of the following:
 - you got or kept health insurance during all or part of the period covered in the notice;
 - you provided information about the insurance coverage;
 - your duty to get and keep health insurance never existed, was changed or was ended;
 - you are not the obligor;
 - you have applied for insurance coverage for your children;
 - health insurance is available to you but it is not cost-beneficial combined with insurance provided by the other parent, and your medical support order allows this defense;
 - health insurance is not available to you at a reasonable cost.
4. The hearing officer will decide the facts and will consider your defense(s). The hearing officer cannot decide issues of visitation, custody, paternity, or how the obligee uses the support or public assistance money. The hearing officer cannot change an existing support order.
5. The Office of the Administrative Law Judge (OALJ) will inform you in writing of the time, date and place for the hearing. The OALJ will mail the hearing notice and other hearing papers to the address you provide. You must keep the OALJ informed of any change(s) in your address.
6. The hearing will be held by telephone unless the hearing officer determines an in-person hearing is appropriate. If the hearing is held by telephone, you will receive additional information about telephone hearing procedures.
7. You have the right to appear by yourself or with an attorney, or to have an attorney appear for you. If you hire an attorney, it is your responsibility to pay any fees charged for such representation.

Case Number: _____) _____
) Obligee as of Notice Date
 In Re the Medical Support Obligation of:) _____
 _____) _____
 Obligor) Children

**STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

**FIELD(9) • FIELD(10)IFNOTBLANK(11) • FIELD(11)ENDIF IFNOTBLANK(12) •
FIELD(12)ENDIF**

FIELD(7) FIELD(8)

In Re the Medical Support Obligation of: Obligee as of Notice Date:

FIELD(35)

FIELD(45)

Obligor

Children:

Case Number: **FIELD(2)**

FIELD(19)IFNOTBLANK(20), FIELD(20)ENDIF IFNOTBLANK(21), FIELD(21)ENDIF IFNOTBLANK(22), FIELD(22)ENDIF IFNOTBLANK(23), FIELD(23)ENDIF IFNOTBLANK(24), FIELD(24)ENDIF IFNOTBLANK(25), FIELD(25)ENDIF IFNOTBLANK(26), FIELD(26)ENDIF

**MOTION AND ORDER TO DISMISS
NOTICE OF HEALTH INSURANCE PENALTY**

STATE OF MONTANA

)

:SS.

County of **FIELD(34)**

)

I, the undersigned, first sworn upon my oath, say:

1. I am an investigator for the State of Montana, Department of Public Health and Human Services, Child Support Enforcement Division (CSED);
2. The CSED issued a Notice of Intent to Enroll and Assess Health Insurance Penalty to the obligor named above. The CSED issued the notice on **FIELD(53)**. The obligor was served with the notice according to the Montana Rules of Civil Procedure;
3. The obligor proved that health insurance coverage has been obtained or is not available and has provided information about the insurance.

The CSED moves the Hearing Officer to dismiss the penalty portion of the NOTICE OF INTENT TO ENROLL AND ASSESS HEALTH INSURANCE PENALTY. However, the CSED reserves the right to issue an ORDER TO ENROLL to the obligor's payor and, if different, the obligor's health insurance plan at any time without further notice.

October 24, 1996

FIELD(4), Investigator

Child Support Enforcement Division

SUBSCRIBED AND SWORN TO before me, a Notary Public for the State of Montana,
on the date written above.

(S E A L)

Notary Public, State of Montana

Residing at:_____

My Commission Expires:_____

DECISION AND ORDER

Having considered the CSED's motion, and for good cause appearing, IT IS ORDERED:

1. The penalty portion of the NOTICE OF INTENT TO ENROLL AND ASSESS HEALTH INSURANCE PENALTY issued to the obligor on **FIELD(53)** is dismissed.
2. The CSED is permitted to issue another NOTICE OF INTENT TO ENROLL AND ASSESS HEALTH INSURANCE PENALTY to the obligor. The notice can be issued whenever the CSED determines that the obligor has allowed health insurance to lapse, or has failed to provide information about the insurance, and a penalty is appropriate.
3. The CSED may issue an Order to Enroll to the obligor's payor of income and, if different, the obligor's health insurance plan at any time without further notice.

DATED this _____ day of _____, 19____.

Administrative Law Judge/Hearing Officer

CERTIFICATE OF MAILING

This is to certify that I, one of the legal unit administrative staff, did serve by prepaid mail on the _____ day of _____, 19____, a true and correct copy of the foregoing Decision and Order to the following:

FIELD(4)
FIELD(9)
FIELD(10)
IFNOTBLANK(11)FIELD(11)
ENDIF IFNOTBLANK(12)FIELD(12)
ENDIF
FIELD(35)
FIELD(15)
FIELD(16)
IFNOTBLANK(17)FIELD(17)
ENDIF IFNOTBLANK(18)FIELD(18)
ENDIF

FIELD(27)
FIELD(30)
FIELD(31)
IFNOTBLANK(32)FIELD(32)
ENDIF IFNOTBLANK(33)FIELD(33)
ENDIF
FIELD(45)

FIELD(36)
FIELD(37)
FIELD(38)
IFNOTBLANK(39)FIELD(39)
ENDIF IFNOTBLANK(40)FIELD(40)
ENDIF

Hearings Assistant**COMMENT(**
)ASSIGN(PrtFlag;1)COMMENT(Make sure "How many copies" is asked)COMMENT(
)ASSIGN(saveFlag;1)COMMENT(Specify that this document needs to be saved)

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

Regarding: _____

SSN: _____

Obligee: _____

Case No. _____

(c/o CSED at above address)

Other Parent:(If different from Obligee and Obligor)

(c/o CSED at above address)

Children's Names	DOB	SSN
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ORDER TO ENROLL

I. YOUR DUTIES AND OBLIGATIONS

The Child Support Enforcement Division (CSED) orders you to enroll the above-named children in the health insurance plan that you offer as follows:

- a. In the same plan as the obligor; or if the obligor is not covered;
- b. In the least expensive plan available to the obligor.
- c. The children must be enrolled within thirty (30) days. Enrollment may NOT be delayed until an open enrollment period.

The CSED further orders you to withhold the premiums for the health insurance from any money you pay to the above-named obligor, in addition to any child support obligation that is currently being withheld.

You are further ordered to complete, sign, and return the enclosed acknowledgment and response form within 30 days.

You are not required to enroll the above-named children in the health insurance plan only if the following occurs:

- a. The amount of the premium, combined with the withholding for child support exceeds 50% of the obligor's net wages or earnings; or
- b. The CSED modifies or terminates this ORDER TO ENROLL; or
- c. Health insurance is not available through you.

If coverage is not provided, or is terminated for any reason, you must inform the CSED immediately of the termination date or date coverage is not provided, and explain the reason for termination or failure to provide coverage.

II. YOUR LIABILITIES

You may be **personally liable** for a penalty of up to \$500, and may also be assessed penalties of \$150 or up to \$25.00 per day or **both**, each time you fail to:

- a. Enroll the child in the plan;
- b. Respond to the CSED as stated in Section I above;
- c. Modify or terminate coverage when later ordered by the CSED;
- d. Withhold premiums for the health insurance.

III. SPECIAL SITUATIONS

You may receive more than one ORDER TO ENROLL and also more than one ORDER TO WITHHOLD INCOME, for this obligor. If you receive more than one order, you must try to withhold the total amount of **ALL** orders. **Remember, if the income is wages or earnings, the grand total of all withholdings cannot be more than 50% of net income.**

If you are not able to withhold enough to meet the terms of all of the orders, you must first satisfy all Orders to Withhold Income, and then satisfy all Orders to Enroll. You may receive writs of execution, garnishments, wage assignments, voluntary income deductions, or claims by creditors against the same person's income. If this happens, you must **first** withhold the amount(s) of any CSED orders.

Retain this order in your records and if at any time your payments to the obligor are sufficient to comply with this order, you must enroll the children at once. This order remains effective through breaks in employment.

IV. LEGAL BASIS FOR THIS ORDER

The CSED has a right to order you to withhold and enroll the children in health insurance plans under MCA Title 40, Chapter 5, Part 8. The rules of the CSED, as published in the Administrative Rules of Montana, also apply.

V. QUESTIONS

If you have questions about this order, please contact the CSED. When you do, refer to the case number noted at the top of this order.

Investigator: _____

DATED _____, 19____.

MARY ANN WELLBANK, Administrator
Child Support Enforcement Division

By: _____
Regional Manager

KEEP THIS ORDER IN YOUR RECORDS

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

Regarding: _____

Obligee: _____

(c/o CSED at above address)

Other Parent: (If different from Obligee and Obligor)

(c/o CSED at above address)

SSN: _____

Case No. _____

Children's Names

DOB

SSN

Children's Names	DOB	SSN
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ORDER TO MODIFY/TERMINATE ENROLLMENT

I. YOUR DUTIES AND OBLIGATIONS

The Child Support Enforcement Division (CSED) orders you to change enrollment of the above-named Children in the health insurance plan that you offer as follows:

- ☐ Terminate the enrollment of the following children, unless either parent has made arrangements for continued coverage:

- ☐ Add the following children to the health insurance plan. The children must be enrolled within thirty (30) days. Enrollment may NOT be delayed until an open enrollment period:

NOTICE: This ORDER TO MODIFY/TERMINATE ENROLLMENT applies to the above-referenced case only. It does not affect any existing Orders to Withhold Income in the above-referenced case, and does not affect ORDERS TO ENROLL or ORDERS TO

MODIFY/TERMINATE ENROLLMENT in other cases.

The CSED further orders you to withhold the premiums for the health insurance from any money you pay to the above-named obligor, in addition to any child support obligation that is currently being withheld.

You are further ordered to complete, sign, and return the enclosed acknowledgment and response form within 30 days.

If applicable, you are not required to enroll the above-named children in the health insurance plan if the following occurs:

- a. The amount of the premium, combined with the withholding for child support exceeds 50% of the obligor's net wages or earnings; or
- b. The CSED modifies or terminates this ORDER; or
- c. Health insurance is not available through you.

If coverage is not provided, or is terminated for any reason, you must inform the CSED immediately of the termination date or date coverage is not provided, and explain the reason for termination or failure to provide coverage.

II. YOUR LIABILITIES

You may be **personally liable** for a penalty of up to \$500, and may also be assessed penalties of \$150 or up to \$25.00 per day or **both**, each time you fail to:

- a. Enroll the child in the plan;
- b. Respond to the CSED as stated in Section I above;
- c. Modify or terminate coverage as ordered;
- d. Withhold premiums for the health insurance.

III. SPECIAL SITUATIONS

You may receive more than one ORDER TO ENROLL or ORDER TO MODIFY/TERMINATE ENROLLMENT, and also more than one Order to Withhold Income, for this obligor. If you receive more than one order, you must try to withhold the total amount of **ALL** orders. **Remember, if the income is wages or earnings, the grand total of all withholdings cannot be more than 50% of net income.**

If you are not able to withhold enough to meet the terms of all of the orders, you must first satisfy all Orders to Withhold Income, and then satisfy all Orders to Enroll or Orders to Modify/Terminate Enrollment.

You may receive writs of execution, garnishments, wage assignments, voluntary income deductions, or claims by creditors against the same person's income. If this happens, you must **first** withhold the amount(s) of any CSED orders.

Retain this order in your records and if at any time your payments to the obligor are sufficient to comply with this order (if applicable), you must enroll the children at once. This order remains effective through breaks in employment.

IV. LEGAL BASIS FOR THIS ORDER

The CSED has a right to order you to withhold and enroll the children in health insurance plans under MCA Title 40, Chapter 5, Part 8. The rules of the CSED, as published in the

Administrative Rules of Montana, also apply.

V. QUESTIONS

If you have questions about this order, please contact the CSED. When you do, refer to the case number noted at the top of this order.

Investigator: _____

DATED _____, 19____.

MARY ANN WELLBANK, Administrator
Child Support Enforcement Division

By: _____
Regional Manager

KEEP THIS ORDER IN YOUR RECORDS

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406)442-7278

Obligor: _____ Case Number: _____

Children: _____

**ACKNOWLEDGMENT
AND RESPONSE TO ENROLLMENT ORDER**

You must complete this form and sign and return it to the CSED at the above address within 30 days.

Please check the appropriate box(es) and provide any requested information.

☐ The following children ☐ have been ☐ will be enrolled in the health insurance plan:

Children's Names: _____

Insurance Co. Name: _____

Insurance Co. Address: _____

Group No: _____

Certificate No: _____

Beginning and end dates of coverage: _____

Amount of deductible: \$ _____

Total amount of premium: \$ _____

Amount of premium paid by Obligor: \$ _____

Amount of children's portion of premium paid by Obligor: \$ _____

☐ The enrollment of the following children in the health insurance plan has been, or will be, terminated:

Children's Names: _____

If termination was not ordered by the CSED, please explain. _____

☐ The plan does not permit the following children to be covered. Please give children's names and explain: _____

☐ Health insurance is not available through the employer/health insurance plan administrator. Please explain. _____

☐ Other. Please explain. _____

Name of Information Provider, Position

Date

Department of Public Health
and Human Services

section:
MEDICAL SUPPORT ENFORCEMENT

CHILD SUPPORT ENFORCEMENT

subject:
Enforcing Health Insurance
Orders--Payor/Plan
Administrator

SUPERSEDES: [new section]

REFERENCES: M.C.A. §§ 40-5-801 through 40-5-825 (Medical Support Reform Act)

TERMINOLOGY: For convenience the following terms, defined as shown, are used in this section:

"Employer" means both the payor of income to the obligor **and** the health insurance plan administrator. In most cases the plan administrator will be the payor; however, if the plan administrator is different from the payor, both entities are subject to the procedures of this section.

"Enrollment order" means either the Order to Enroll or the Order to Modify/Terminate Enrollment.

"Enrollment penalty" means the penalty authorized at MCA §40-5-821, imposed against a payor or plan administrator.

"Acknowledgment and Response" means the Acknowledgment and Response to Enrollment Order.

POLICY: The Montana Medical Support Reform Act (the Act) requires the employer, upon being presented with a medical support order for the obligor's children, to enroll the children in a health insurance plan available to the obligor. The CSED "presents" the medical support order to the employer by sending an Order to Enroll or an Order to Modify/Terminate Enrollment (enrollment order) by certified mail. The enrollment order contains the basic enrollment requirement from the medical support order, as well as other provisions from the Act relating to employer obligations. The Act provides for a penalty (enrollment penalty) of up to \$25 for each day that a payor or plan administrator knowingly violates the enrollment order.

This section contains procedures for enforcing an Order to Enroll or an Order to Modify/Terminate Enrollment through an enrollment penalty. To enforce an enrollment order through a contempt action, see section CS 503.5, Administrative Civil

**section: MEDICAL SUPPORT
ENFORCEMENT**

**subject: Enforcing Health
Insurance Orders--Payor/Plan
Administrator**

Contempt.

The CSED initiates the enrollment penalty process by serving the employer with a Notice of Intent to Assess Enrollment Penalty specifying the type of noncompliance and the corresponding penalty amount. The enrollment penalty cannot be imposed without a hearing, so if the employer does not respond satisfactorily to the notice within 10 days, the CSED orders a hearing. If before the hearing is held the employer proves it was in compliance with the enrollment order during the notice period, the CSED may dismiss the notice.

If subsequent to the entry of the first penalty order by the CSED the employer shows proof it currently complies with the enrollment order, the CSED may suspend the penalty even if the employer did not comply during the notice period. Any subsequent failure to comply with the enrollment order will subject the employer not only to the new enrollment penalty but also to the suspended penalty.

PROCEDURES:

RESPONSIBILITY

ACTION

Caseworker

1. Upon determining that an employer has failed to comply with an enrollment order, prepares and secures service of notice package containing
 - form CS-520.9A, Notice of Intent to Assess Enrollment Penalty,
 - form CS-520.7R, Acknowledgment and Response to Enrollment Order, and
 - form CS-401.3G, Sheriff's Praecipe (or cover letter to private process server), or form CS-405.1, Acknowledgment of Receipt of Notice and Waiver of Service.

NOTE: See section CS 520.7 for guidance in determining the penalty amount.

2. Monitors for return of Acknowledgment and Response within 10 working days after service of notice package, and takes action as

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Enforcing Health
Insurance Orders--Payor/Plan
Administrator

follows:

- a. If employer returns Acknowledgment and Response indicating children have been enrolled or insurance is not available, executes form CS-401.3F, Motion and Order to Dismiss Administrative Notice, as in section CS 401.3. Updates SEARCHS according to insurance information received, and monitors for continued compliance.
- b. If employer does not return Acknowledgment and Response, or returns Acknowledgment and Response but in some way does not comply with enrollment order, prepares form CS-520.9B, Motion for Enrollment Penalty Hearing, listing employer in certificate of mailing. Sends original to the Office of the Administrative Law Judge (OALJ), and one copy to the employer; retains one copy for case record. Proceeds to step 3.
3. Prepares and submits hearing exhibits including copy of enrollment order, original Notice of Intent to Assess Enrollment Penalty, and original proof of service; retains copies for file.
4. If before hearing is held employer returns Acknowledgment and Response indicating children have been enrolled or insurance is not available, dismisses Notice of Intent to Assess Enrollment Penalty as in step 2a, attaching note to dismissal motion informing OALJ that a hearing has been requested. Updates SEARCHS according to insurance information received, and monitors for continued compliance.
5. Attends hearing, awaits outcome, and proceeds according to hearing Decision and Order. If Decision and Order imposes penalty on employer, monitors for payment of ordered amount and arranges for deposit in state general fund outside of SEARCHS accounting.

section: MEDICAL SUPPORT
ENFORCEMENT

subject: Enforcing Health
Insurance Orders--Payor/Plan
Administrator

If employer fails to pay ordered amount, consults with CSED staff attorney about feasibility of obtaining writ from district court to compel payment.

6. Following enrollment penalty hearing, monitors for compliance with enrollment order. If employer does not comply within reasonable time following issuance of order from hearing, at caseworker's discretion begins again at step 1 to assess new penalty for period immediately following original penalty period. (Reasonable time for compliance will depend on circumstances of case and other factors specific to employer.)
7. At caseworker's discretion, if Decision and Order from hearing assesses penalty against employer, and employer subsequently complies with enrollment order, moves for suspension of penalty by preparing and submitting to OALJ form CS-520.9C, Suspension of Enrollment Penalty, with copy of Decision and Order attached; retains copy for case record.

NOTE: Suspended Penalty Amount Included in Later Action. If it becomes necessary in the future to send a second Notice of Intent to Assess Enrollment Penalty (that is, the employer does not maintain compliance with the enrollment order), the amount of the suspended penalty should be added to the new penalty amounts. Any penalty order that results from the subsequent notice is not eligible for suspension.

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

Regarding: _____

SSN: _____

Obligee: _____

Case No. _____

(c/o CSED at above address)

Other Parent:(If different from Obligee and Obligor)

(c/o CSED at above address)

Children's Names

DOB

SSN

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTICE OF INTENT TO ASSESS ENROLLMENT PENALTY

TO:

Payor

Plan Administrator

_____	_____
_____	_____
_____	_____

The Child Support Enforcement Division (CSED) ordered you to perform certain actions relating to health insurance coverage for the above-named children; the actions are required by State law at MCA Title 40, Chapter 5, Part 8. The CSED has reason to believe that you failed to perform the action(s) checked below:

- ☐ Enroll the children in a health insurance plan you offer

- ☐ Withhold premiums for the health insurance from any money you pay to the obligor
- ☐ Provide information to the CSED about the health insurance coverage
- ☐ Inform the CSED if coverage is not provided or is terminated
- ☐ Modify coverage as specified.

The CSED intends to charge you a penalty of \$_____ for the failure(s) noted above, for the period from _____, and intends to charge an additional penalty against the above payor of \$150 for failure to withhold premiums or notify the CSED of termination of coverage, if applicable.

If you agree that you failed to obey State law as stated in this Notice, you can avoid additional penalties by immediately taking the action(s) checked above and returning the enclosed acknowledgment and response form.

If you disagree with any part of this Notice, you must contact the CSED immediately to resolve the disagreement. If the disagreement cannot be resolved, or if you do not contact the CSED in response to this Notice, the CSED will hold a hearing to determine whether a penalty is appropriate and, if applicable, the amount of the penalty.

LEGAL BASIS OF THIS NOTICE

The CSED has a right under MCA Title 40, Chapter 5, Part 8 to order you to enroll the above-named children in any health insurance plan you make available to the obligor, to deduct the insurance premiums from any amounts you owe to the obligor, to provide information relating to the health insurance coverage, and to modify coverage under the plan. The CSED has a right under MCA §§ 40-5-813 and 40-5-821 to impose a penalty on any payor or plan administrator that knowingly violates the provisions described above.

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

Regarding: _____

SSN: _____

Obligee: _____

Case No. _____

(c/o CSED at above address)

Other Parent: (If different from Obligee and Obligor)

(c/o CSED at above address)

Children's Names

DOB

SSN

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

MOTION FOR ENROLLMENT PENALTY HEARING

The Child Support Enforcement Division (CSED) representative whose signature appears below moves the Hearing Officer for a hearing to determine if an enrollment penalty should be imposed in the above-named case. A hearing is needed because:

1. The CSED is enforcing a medical support or health insurance order for the above-named children. On the basis of this order the CSED served a Notice of Intent to Assess Enrollment Penalty on the payor and, if different, the plan administrator listed below:

Payor: _____

Plan Administrator: _____

2. The payor or plan administrator has not timely responded to the Notice by
- enrolling the children in a health insurance plan, or

- withholding the premiums for the health insurance, or
- providing information as requested.

3. Penalties may be appropriate under Montana Code Annotated sections 40-5-813 and 40-5-821.

DATED this ____ day of _____, 19____.

CERTIFICATE OF MAILING

This is to certify that I, an Investigator for the CSED, deposited in the regular U.S. Mail, postage prepaid on the ____ day of _____, 19____, a true and correct copy of the foregoing Motion for Enrollment Penalty Hearing to the following:

Investigator
Child Support Enforcement Division

STATE OF MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION
(406) 442-7278

Regarding: _____

SSN: _____

Obligee: _____

Case No. _____

(c/o CSED at above address)

Other Parent: (If different from Obligee and Obligor)

(c/o CSED at above address)

Children's Names

DOB

SSN

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SUSPENSION OF ENROLLMENT PENALTY

STATE OF MONTANA)

:ss.

County of: _____)

I, the undersigned, first sworn upon my oath, say:

1. I am an Investigator for the State of Montana, Department of Public Health and Human Services, Child Support Enforcement Division (CSED);
2. The attached enrollment penalty order was entered for failure to comply with state law at MCA Title 40, Chapter 5, Part 8;

3. The CSED moves the hearing officer to suspend the enrollment penalty against the ☐ payor ☐ plan administrator, who has now complied with the applicable law; and
4. The hearing officer has not suspended any previous enrollment penalty; and
5. The CSED reserves the right to issue another NOTICE OF INTENT TO ASSESS ENROLLMENT PENALTY. That notice will include the penalty suspended here. The CSED will issue the notice whenever it determines that the payor or plan administrator has failed to comply with the provisions of MCA Title 40, Chapter 5, Part 8, and a penalty is appropriate.

DATE

Investigator
Child Support Enforcement Division

SUBSCRIBED AND SWORN TO before me, a Notary Public for the State of Montana, on the date written above.

(Seal)

NOTARY PUBLIC

Residing at:_____

My Commission Expires:_____

DECISION AND ORDER

For good cause appearing, the foregoing motion is hereby granted. The CSED is permitted to issue another Notice of Intent to Assess Enrollment Penalty to the payor or plan administrator. The notice can be issued whenever the CSED determines that the payor or plan administrator has failed to comply with the provisions of MCA Title 40, Chapter 5, Part 8, and a penalty is appropriate.

DATED this _____ Day of _____, 19_____.

Hearing Officer
Child Support Enforcement Division

CERTIFICATE OF MAILING

This is to certify that I, one of the Hearings Assistants for the CSED Office of the Administrative Law Judge, deposited in the regular U.S. Mail, postage prepaid on the _____ day of _____, 19_____, a true and correct copy of the foregoing Decision and Order to the following:

Hearings Assistant

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
ADMINISTRATIVE LICENSE
SUSPENSION

subject:
Overview

SUPERSEDES: CS 530.1, ADMINISTRATIVE LICENSE SUSPENSION--Overview,
August 1, 1996.

REFERENCE: MCA 40-5-701 et seq.

INTRODUCTION: When an obligor owes a support debt equal to or greater than six months' support (child or spousal), or a person fails to comply with a CSED subpoena, the CSED may initiate administrative license suspension proceedings to enforce the debt or the subpoena. This section provides general policy on the appropriate use of license suspension as an enforcement tool, and gives definitions for terms used in connection with license suspension.

**POLICY--
ENFORCING
A DEBT:**

General Discretion. License suspension is available as an enforcement tool at any time after the establishment of a support obligation, and should be included in the "checklist" of methods the CSED can apply to collect support in a case. There is no requirement to exhaust other enforcement methods before proceeding with administrative license suspension. However, the caseworker must apply a certain discretion in selecting cases for license suspension action. Briefly, there must be a reasonable expectation the action will produce a beneficial effect, in light of both existing collections and collection potential in the case. PROCEDURES in section CS 530.2 (step 3) give a number of more specific considerations for identifying cases appropriate for license suspension.

Lack of Income and Assets. One of the considerations listed in section CS 530.2 relates to the obligor's involuntary financial position. **The intent of administrative license suspension is not to suspend licenses but to enforce payment of support.** Therefore, in cases where the obligor has minimal assets and no potential to earn income, the license suspension process will likely be inappropriate. In considering potential to earn income, the caseworker should take into consideration previous work history, past prison records, physical or mental incapacity, and any other personal

section:
Administrative License
Suspension

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Overview

history that would make it difficult for the obligor to earn income beyond subsistence.

POLICY--
ENFORCING A
SUBPOENA:

License suspension is also available for enforcing compliance with a CSED subpoena. However, this application should be reserved for cases where compliance is essential to successful advancement of the case, and suspension action is likely to persuade the person to comply. License suspension may be used as an alternative to, or in conjunction with, other "indirect" techniques available to the CSED for enforcing subpoenas, such as administrative contempt and court-compelled genetic testing. The CSED gained the authority to suspend licenses for noncompliance in 1997, and anticipates (as of this writing) the activity will not be broadly applied, but limited to special cases where there is a particular benefit.

DEFINITIONS: In addition to the definitions in MCA § 40-5-701, the following definitions apply:

"ALTERNATIVE PAYMENT PLAN" is the payment plan offered by the CSED when the obligor claims financial inability to pay the current support obligation plus the amount toward the support debt that would be offered in a Financial Hardship Payment Plan. The total payment amount may be any amount agreed by the caseworker, including an amount less than the current support obligation. The Alternative Payment Plan provides for renegotiation when the obligor's ability to pay changes, or when the support obligation is modified; it may include special conditions in addition to payment; it states the legal support obligation is not changed when the payment amount is for less than current support; and it does not contain a voluntary withholding authorization.

"FINANCIAL HARDSHIP PAYMENT PLAN" is the payment plan offered by the CSED when the obligor claims financial inability to pay the current support obligation plus a payment of 1/24 of the total support debt amount. When determining a financial hardship payment plan amount, the

section:
Administrative License
Suspension

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caseworker uses form CS-510.5B, "Hardship Adjustment Worksheet" to compute the amount to be paid toward retirement of the support debt. In no case should the payment on the support debt be less than \$25.00 per month except when 1/24th of the total support debt is already less than \$25.

"HEARING" means one of the following, depending on the stage in the license suspension action:

- (1) NOISL hearing--requested in timely response to the NOISL, to show cause why suspension of the license would not be appropriate; hardship defenses may be asserted
- (2) Stay hearing--requested by the licensee after a license is suspended, to move for a stay based on a hardship
- (3) 10-day hearing--requested in timely response (within 10 days) to notice the CSED will suspend the license for failure to comply with terms of a payment plan or with conditions imposed by the hearing officer.

"LICENSE" means a license, certificate, registration, permit, or any other authorization issued by an agency of the State of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

"LICENSEE" means the person who is the subject of the license suspension action. Where the action is based on a delinquency, the licensee will always be the obligor; where the action is taken for noncompliance with a CSED subpoena, the licensee may be the obligor or any other person subject to a CSED "subpoena" (as defined in this section) in the case. Examples of non-obligor licensees are obligees, alleged fathers, witnesses at hearing, and persons holding requested records.

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"LICENSING AUTHORITY" means any department, division, board, agency or instrumentality of this state that issues a license. This does not include city-issued business licenses because cities are not instrumentalities of the state. In cases of county-issued licenses, the CSED legal staff should be consulted.

"LIFTING OF STAY" means an order by a CSED hearing officer that the existing stay of suspension of the license is no longer appropriate because (1) the licensee has failed to abide by the conditions of the stay, or (2) the basis for the stay no longer applies. When a stay is lifted the license is again automatically suspended.

"PAYMENT PLAN" is an Alternative, Financial Hardship, Standard, or custom-language payment plan that meets applicable definitions in this section and MCA 40-5-701, and includes the following provisions: acknowledgment of the support debt amount; conditions for default; automatic adjustments in payment distribution; CSED pursuit of payment by other means; and waiver of the obligor's right to (1) service of a NOISL, (2) hearing on the NOISL, and (3) the affirmative defense of the statute of limitations.

"PERSON" generally means an individual natural person, not a corporation, partnership or other legal entity. However, some licenses may be issued for use of a particular vehicle or property, for example, the size, weight and load special permits issued by the Department of Transportation. In that case, if the applicant for the permit or owner of the vehicle is an individual natural person it may be possible to suspend that license or permit. See ARM Title 46, Chapter 30, "Administrative License Suspension."

"RECREATIONAL ACTIVITY" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under certain sections of MCA Title 87, chapter 2 (see MCA 40-5-701(11) for citations). Specifically, licenses whose eligibility is subject to

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Administrative License
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suspension by the CSED include Class C trapper's license, Class C-1 landowner's trapping license, Class C-2 nonresident trapper's license, Class C-3 youth trapping license, special licenses (moose, goat, sheep, antelope, grizzly bear, and black bear), drawing for special elk permits, drawing for special antelope licenses, auction of mountain sheep license, auction of Shiras moose license, Class B-10 nonresident big game combination license, Class D-1 nonresident mountain lion license, Class D-2 resident mountain lion license, and Class B-11 nonresident deer combination license.

"RESOLVED"/"RESOLUTION" means, when used in reference to the NOISL, that the CSED has taken official action in the case following service of the NOISL, and the action is complete until the facts in the case change. Specifically, the NOISL is "resolved" when one of the following occurs: (1) the licensee timely enters into an approved payment plan, pays the support debt in full, or complies with the subpoena, (2) the CSED issues an order suspending the license (for default, or following an NOISL hearing), (3) the CSED issues an order dismissing the NOISL, or (4) the CSED issues an order staying the license suspension based on a hardship.

"RESULTANT HARDSHIP" is the hardship a licensee may claim at any time, based on the impact of license suspension on the licensee, the licensee's household, employees, legal dependents, or on other persons, businesses or other entities the licensee serves. This is the hardship specifically provided for in MCA 40-5-710. The burden is on the licensee to prove that the claimed hardship is not merely an inconvenience to the licensee, but is a tangible circumstance that would endanger or otherwise result in irreparable harm to the licensee's household, employees, legal dependents or other persons, businesses or entities served by the licensee. For example, an individual may be licensed to run a Community Home for disabled adults and it may be the only available placement in a rural county. Not much money is made as a result of the license and to suspend the license could result in the need for the state to remove the disabled

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Suspension**subject:**

Overview

adults from the home and to find other placements in other communities or counties, which may not be practical or available. See MCA 40-5-710.

"STANDARD PAYMENT PLAN" is the payment plan offered by the CSED where the total payment amount is equal to the current support obligation plus at least 1/24 of the support debt. The Standard Payment Plan contains a voluntary withholding authorization, and provides for renegotiation when the obligor's support obligation is modified.

"STAY OF SUSPENSION" means an order by a CSED hearing officer that an existing suspension of the license is not appropriate because (1) a "resultant hardship" or "financial hardship" applies, (2) the licensee has entered into an approved payment plan agreement or an approved plan for compliance with a CSED subpoena, or (3) (for an immediate, temporary stay) a hardship claim or a payment or compliance plan is pending and there is a reasonable chance of irreparable harm before the matter can be determined. A stay may be "lifted" (see definition) at any time by order of the CSED.

(Technically, the CSED also "stays" suspension of the license pending the outcome of a requested hearing on the Notice of Intent to Suspend License (NOISL), or upon resolution of the NOISL through an approved payment plan. However, since the CSED has not yet ordered a suspension at either of these points in the process, no formal "stay" order is needed or issued.)

"SUBPOENA" means a writ or order issued by the CSED that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control. Examples of CSED subpoenas enforceable by license suspension are genetic testing subpoenas, orders to produce financial information, investigative subpoenas, notice and orders for hearing, and subpoenas and subpoenas duces tecum related to hearings. Orders to withhold, orders to enroll, and orders to seek employment are not considered subpoenas for purposes of license

section:
Administrative License
Suspension

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Overview

suspension.

"TERMINATION OF SUSPENSION" means an order by a CSED hearing officer that the suspension of the license is no longer appropriate because the licensee has paid the support debt in full or complied in full, the CSED has closed the case, or for some other reason the licensee is no longer subject to CSED license suspension. (NOTE: When suspension is "stayed" rather than "terminated," the licensee continues to be subject to CSED license suspension.) Termination of a suspension--if applicable--is required even when the suspension is already stayed.

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
ADMINISTRATIVE LICENSE
SUSPENSION

subject:
Notice of Intent to Suspend
License

SUPERSEDES: CS 530.2, Notice of Intent to Suspend License, August 1, 1996.

REFERENCES: MCA 40-5-701 et seq.

POLICY: The CSED may initiate license suspension proceedings (1) in cases where the obligor owes a support debt equal to or greater than six months' support obligation or (2) against any individual who fails to comply with a CSED subpoena. This section contains procedures for determining whether license suspension is appropriate, for initiating license suspension action, and for resolving the Notice of Intent to Suspend License (NOISL). Also included in this section are procedures for renewing one-year suspensions of recreational licenses, and procedures for processing requests for relief from default in certain circumstances.

After the NOISL is resolved, procedures in section CS 530.3 for monitoring and adjusting the license suspension status apply.

Definitions of terms used in the remainder of this section are given in section CS 530.1.

In the following procedures **BOLDED CAPITAL LETTERS** at the beginning of a step indicate the following special restrictions:

DELINQUENCY The step applies **only** when the basis for license suspension is a delinquency.

NONCOMPLIANCE The step applies **only** when the basis for license suspension is noncompliance with a subpoena.

(Steps without **DELINQUENCY** or **NONCOMPLIANCE** designations apply for either basis of action.)

RECREATIONAL The step applies **only** when the "license" in question is the person's eligibility for a special permit.

section:
Administrative License
Suspension

subject:
Notice of Intent to Suspend
License

DRIV/PROF/OCC The step applies **only** for non-recreational drivers, professional, and occupational licenses.

(Steps without **RECREATIONAL** or **DRIV/PROF/OCC** designations apply for any license type.)

PROCEDURE:

Responsibility	ACTION
Caseworker	1. Initiates license suspension process in step 1a or 1c, depending on basis of action. a. [DELINQUENCY] Upon identifying a support delinquency greater than or equal to six months' support payments, proceeds as follows: i. Determines monthly current child support, and if applicable, spousal support amount. ii. Divides child support debt by monthly current child support amount and spousal support debt by current spousal support amount. iii. If either is equal to or greater than 6, proceeds to next step. If either is expected to reach 6 within next three months, at caseworker's discretion proceeds as appropriate in steps 2 through 8.

Review and Modification
Unit Caseworker b.

[NONCOMPLIANCE] Identifies case where Review and Modification Unit (RMU) is unable to perform necessary guidelines calculation because licensee has not complied with order to produce financial information issued by RMU. Alerts regional caseworker and provides

section:
Administrative License
Suspension

subject:
Notice of Intent to Suspend
License

necessary case facts.

Caseworker

- c. **[NONCOMPLIANCE]** Upon directly identifying, or being informed by RMU caseworker of, an individual who has failed to comply with a CSED subpoena, determines whether license suspension would be appropriate to enforce compliance. Factors affecting determination may include

- whether individual is likely to comply (without license suspension incentive) if given additional opportunity
- whether compliance is necessary to proceed to next step in case
- whether individual has shown pattern of noncompliance with CSED requirements and appears likely to continue.

If license suspension is appropriate based on noncompliance, follows applicable procedures in this section.

2. Identifies any other license suspension actions already begun against same licensee in other cases or in this case.

- a. Coordinates--but does not combine--multiple license suspension actions by (1) alerting OALJ of multiple actions (note securely attached to initial documents sent to OALJ is sufficient) and (2) where possible, issuing multiple notices or multiple motions at the same time.

- b. Except as allowed in step 3e, continues to pursue each action against a particular licensee regardless of status of other actions. Especially where actions are occurring in **different cases**, the CSED should not drop one action simply because the person's license is "already suspended" by another. If the existing suspension is stayed or terminated, the net effect on the person's

section:
Administrative License
Suspension

subject:
Notice of Intent to Suspend
License

license will depend on whether a suspension from any other action is still in effect.

3. Determines if any of the following considerations applies, and takes action as indicated:

- a. **[DELINQUENCY]** Licensee payment pattern indicates a likelihood of continued adequate regular payments, including amounts toward the support debt. These could be voluntary, income withholding, or other. **Continues with existing collection efforts; does not initiate license suspension activities.**

NOTE: Initiating License Suspension In Cases Where Employer Identified. CSED policy allows initiation of license suspension in cases where an employer is identified **only if** (1) ordered withholding is not producing an acceptable level of payments (reported employment is part-time, seasonal, or short-duration), or (2) the CSED does not have jurisdiction to order withholding.

- b. **[DELINQUENCY]** Licensee has no reliable source of income and is not expected to have a reliable source of income in the foreseeable future, AND the lack of income is involuntary or beyond the licensee's control. **Continues to monitor case for income source; does not initiate license suspension activities.**
- c. **[DELINQUENCY]** CSED is currently litigating the amount of the support debt either in a court or administrative proceeding. **Waits for outcome of litigation, repeats step 1, then proceeds to step 4.**
- d. **[DELINQUENCY]** Licensee has filed a bankruptcy petition. **Consults with CSED regional legal staff to determine whether license suspension**

section:
Administrative License
Suspension

subject:
Notice of Intent to Suspend
License

is available; if so, proceeds with step 4.

- e. Any other facts indicating that license suspension would not be effective as an enforcement tool, or would not be appropriate in the particular situation. **Reviews facts with supervisor to determine if license suspension activities should be initiated or deferred.**

EXAMPLE 1: A licensee is suffering from a terminal illness, and suspension of his or her professional license would lead to loss of employment and, as a consequence, loss of health insurance benefits.

EXAMPLE 2: The CSED has already taken license suspension action in the case against the same licensee for a previous delinquency or noncompliance, and there is a suspension, stay, or payment plan in effect. A new action, although legally supportable, would not produce any additional enforcement benefit at this time.

EXAMPLE 3: The licensee is a paying obligor, the basis for a suspension action is noncompliance, and in the caseworker's discretion a suspension action may have a detrimental effect on ongoing enforcement in the case.

4. Identifies licenses or eligibility available for suspension, using procedures in steps 4a and 4b below.
- a. **[DRIV/PROF/OCC]** Identifies driver's, professional, or occupational licenses held by licensee. If necessary consults CSED regional office's license list to determine license(s) held, and name and address of licensing authority(ies). For licenses identified or

section:
Administrative License
Suspension

subject:
Notice of Intent to Suspend
License

[step 4, continued]

still in question proceeds to step 5.

NOTE 1: Related Licenses. Some specific types of licenses are closely related to other types: an licensee having one type is very likely to also have the other. (For example, in Montana a person must have a liquor license in order to obtain a gambling license. Suspending only the liquor license creates extra work for the licensing authority, which must explain to the licensee why the gambling license is now also void even though the CSED did not suspend it.) The caseworker should be aware of these connections as much as possible, and should check for and act on "related" licenses whenever indicated.

NOTE 2: Follow-Through Required for Licenses Suspended by Licensing Authority. It is important to complete all appropriate CSED license suspension actions regardless of whether the licensing authority has--independently--temporarily suspended the license. If and when the licensing authority reinstates a license it has previously suspended, it will be to the CSED's advantage to have its suspension order already in place, to continue the suspension.

NOTE 3: Licenses to Practice Law. If the licensee holds an attorney's license the caseworker should consult with the CSED staff attorney to consider initiation of appropriate district court procedures against that license.

- b. [RECREATIONAL] Determines in steps b(i) and (ii) below whether licensee is **both likely and eligible** to apply for one or more special permits issued by Montana Department of Fish

section:
Administrative License
Suspension

subject:
Notice of Intent to Suspend
License

[step 4b, continued]

Wildlife and Parks (FWP). If so, proceeds to step 7 for recreational licenses; if not, proceeds according to step 4a only.

- i. For purposes of this determination, the licensee is considered **likely** to apply if
- the licensee applied for any over-the-counter or special-permit recreational licenses in past years (FWP lists are available for this purpose in the regional office), and there is no reason to believe the licensee has lost interest in the recreational activity, OR
 - certain case information--for example, telephone conversations with a case participant or other person--suggests the licensee is particularly interested in the recreational activities for which over-the-counter and special permits are issued.

NOTE: Caseworker Discretion Required.
The following special considerations apply to actions against recreational licenses:

- (1) At this time FWP implements CSED suspensions of eligibility by performing, for each special permit drawing, a manual comparison of the CSED list of ineligible licensees and the FWP list of applicants. **It is the CSED's policy to minimize the burden on FWP** by limiting the list of ineligible licensees to those against whom suspension actions would be effective. Where a licensee is only remotely likely to

section:
Administrative License
Suspension

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Notice of Intent to Suspend
License

apply for a special permit, the caseworker must determine whether the costs of continuing to pursue suspension in this area are justified by realistic benefits.

- (2) Actions against recreational licenses carry harsher consequences than actions against other licenses. Eligibility, once suspended, cannot be returned until the next license year. For this reason the caseworker must pay even greater attention to accuracy, appropriateness, and enforcement value when determining whether to proceed against a recreational license.

- ii. For purposes of this determination, the licensee is considered **eligible** to apply for a particular permit in the absence of any readily available FWP data showing
- the licensee's eligibility for that permit is currently suspended on the basis of a fish and game violation, or
 - the licensee is not eligible for that permit because the licensee was successful in a past drawing for the same permit.

FWP lists are available for this purpose in the regional office.

5. **[DRIV/PROF/OCC]** Except where the CSED has direct electronic access to the licensing authority's records, contacts licensing authority to verify license is held by
- mailing form CS-530.2A, Inquiry to Licensing Authority; or,
 - if facts of case justify (action is urgent, or existence of license is fairly certain),

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telephoning licensing authority to obtain necessary information requested in letter.

A follow-up call to the licensing authority may be necessary if the written response indicates the authority has additional locate, asset, or income information or to clarify information provided.

6. [DRIV/PROF/OCC] Reviews information obtained from licensing authority. Determines if information leads to other enforcement options (see examples below). If so, proceeds with other options as appropriate. Proceeds to step 7.

EXAMPLE 1: A livestock dealer/broker sells cattle through certain stockyards. The CSED can obtain writs of execution or issue orders to withhold to those stockyards.

EXAMPLE 2: A licensee has a gambling operator's license and owns electronic poker machines. The licensee does not run a bar but leases the machines to bars. The Department of Revenue knows who the licensee has leased the machines to. The CSED can obtain a writ of execution or issue an order to withhold to the lessee (bar owner) to intercept the lease payments due to the licensee gambling machine owner.

EXAMPLE 3: A licensee has farm equipment with a special weight/size/load of some type. The CSED can obtain a description of the equipment and contact the Secretary of State's Office to find out whether there are liens against the property. If there are no liens, the CSED can proceed with a writ of execution to seize and sell.

7. Determines whether it is appropriate to send form CS-530.2B, License Suspension Warning Letter ("Important Information--Please Read"). If so, selects basis for suspension action (delinquency, noncompliance, or both), prepares and sends letter,

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enclosing form CS-501.1A, Debt Computation Worksheet in delinquency cases, and proceeds to step 8. If not, proceeds to step 9.

NOTE: Use of Warning Letter. It is appropriate to send the warning letter when there is no reason to fear that the licensee would flee or hide assets, or if the letter is likely to encourage the licensee to enter into a payment plan or comply with the subpoena without the need for a formal notice.

8. For each basis of action listed in License Suspension Warning Letter, proceeds as in 8a, 8b, or 8c for that basis of action. For any basis not satisfied in 8a, 8b, or 8c, proceeds to step 9.
 - a. If licensee pays debt in full or complies with subpoena, takes no further license suspension action.
 - b. **[DELINQUENCY]** If licensee enters into payment plan, proceeds as in step 15.
 - c. **[NONCOMPLIANCE]** If licensee makes good-faith arrangements to comply with subpoena as soon as external factors allow (for example, cooperates with rescheduling of genetic testing), monitors for future actual compliance and, if obtained, takes no further license suspension action.
9. If License Suspension Warning Letter is not appropriate, or if satisfactory response is not received, prepares Notice of Intent to Suspend License (NOISL) package consisting of
 - **[DELINQUENCY]** Notice of Intent to Suspend License, form CS-530.2C, alleging delinquency;
 - **[DELINQUENCY]** Debt Computation Worksheet, form CS-501.1A;
 - **[DELINQUENCY]** Financial Affidavit, form CS-404.6A;
 - **[NONCOMPLIANCE]** Notice of Intent to Suspend

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License, form CS-530.2C, alleging noncompliance(s);

- Request for License Suspension Hearing, form CS-530.2D;
- if certified mail may not be effective, form CS-409.3G, Sheriff's Praecipe, or cover letter to private process server.

IMPORTANT: Two separate notices are required in cases where the CSED is alleging both a delinquency and a noncompliance. However, a single NOISL may contain multiple allegations of noncompliance.

10. Serves and proceeds to resolve notice(s) as follows:

- a. Secures service of notice package by
- personal service, through sheriff or civil process server, or
 - certified mail, return receipt requested (specifies "restricted delivery" option if useful in obtaining service on proper person in household), or

If service cannot be obtained by any of above methods, attempts to obtain updated address for service on licensee. If attempt fails, checks SEARCHS SOD screen for indication that existing support or paternity order contains deemed service-of-process warning with respect to licensee. If so, completes form CS-405.1B, Efforts to Locate for Service, for case file; sends notice package by regular mail to licensee's last known address, and proceeds as if service had been obtained. If not, monitors for opportunity to obtain service, and takes no further action until licensee is successfully served.

Monitors for timely response according to periods given in step 20 for type of service.

- b. If **additional license** is discovered after

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[step 10, continued]

notice package is served and before NOISL is resolved, proceeds against additional license as appropriate by

- amending the NOISL to include the additional license, or
- issuing a separate NOISL for the additional license only, or

NOTE: Coordination Required. This option requires special coordination at the resolution stage (steps 14, 18, and 23-- payment plan, MOLSA, and hearing) so that a single order can be entered that lists all of the licenses and satisfies all due process requirements.

- including the additional license in any payment plan obtained in step 15 (the signed payment plan takes the place of the NOISL for the additional license).
- c. If **new basis** for suspension arises at any time after notice package is served, and if new basis is determined to be appropriate for action at that time (steps 1 and 3), then, except as noted below, initiates separate action for new delinquency or noncompliance beginning at step 7.

EXCEPTION 1: [NONCOMPLIANCE] At caseworker's option, if new basis is noncompliance, and NOISL for noncompliance has been served and is not yet resolved, amends existing NOISL to include new noncompliance.

EXCEPTION 2: [DELINQUENCY] At caseworker's option, if new basis is additional six months' delinquency, and NOISL for delinquency has been served and is not yet resolved, amends existing NOISL to allege new total debt

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amount.

- d. For EACH NOISL issued in step 9, separately follows remaining procedures beginning with step 11.
11. [DELINQUENCY] if employer or payor is identified at any time after NOISL is served but before NOISL is resolved, proceeds with income withholding actions as applicable in sections 510.1, 510.3, 510.4, 510.10, 510.11, and 510.15, coordinating procedures in this section as follows:
- a. Where useful in management of the case, substitutes signed Standard or Financial Hardship Payment Plan Agreement (but not Alternative Payment Plan Agreement) for Notice of Intent to Withhold Income, or Supplemental Notice of Intent to Withhold, as applicable. (Note that the payment plan authorizes income withholding for the agreed amounts for only as long as the plan is in effect; see step 11e for procedures to renew withholding when plan expires.) See NOTE and CAUTION after step 11e.
 - b. If license suspension action leads to hearing, requests hearing officer require continued participation in any CSED-ordered income withholding as a condition of any stay resulting from hearing. If income withholding has not been ordered, requests hearing officer seek licensee's voluntary agreement to income withholding for any payment plan imposed at hearing where amounts in payment plan meet Montana income withholding requirements. (If the licensee refuses to agree to income withholding in this situation the CSED cannot compel it within the license suspension process.) For voluntary withholding obtained at hearing, see CAUTION regarding time frames at the end of this step.

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[step 11, continued]

- c. Where income withholding is being implemented in this step (11), and the licensee defaults on the NOISL, the caseworker should consider whether suspension of the license would be detrimental to continued income withholding. If so, the CSED may, in its discretion, choose not to pursue the default at this time but allow the NOISL to remain in effect. The CSED then retains the ability to take license suspension default action at any time in the future. (Future default action may be appropriate, for example, if the licensee discontinues employment.) If default action is postponed for any significant length of time (more than 30 days) after the end of the response period, the caseworker must use a Notice of Default (step 17) to re-initiate the default process.
- d. At caseworker's discretion, dismisses Notice of Intent to Suspend License as in step 14g if dismissal will be beneficial to overall enforcement of case. Factors that may further affect the decision to dismiss are
- (1) Whether income withholding is implemented for the total amount of debt alleged in the NOISL before the license suspension action is resolved.
 - (2) Whether there is convincing evidence the licensee will cooperate with income withholding--that is, will maintain continuous employment, and will timely notify the CSED of any changes in employer.
- e. If income withholding is implemented in this step (11) based solely on voluntary payment plan or on agreement at license suspension hearing, proceeds (in addition to actions taken in step 15) to monitor

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[step 11e, continued]

- declining balance of debt acknowledged in Standard Payment Plan (or equivalent imposed plan), or
- time left on hardship allowed in Financial Hardship Payment Plan (or equivalent imposed plan).

Three months before payment plan would normally expire, contacts licensee to arrange for continued withholding. Takes action in section CS 510.3 or 510.4 to gain authority to continue income withholding for current support and any additional support debt when payment plan expires.

NOTE: Use of Payment Plan as Basis for Income Withholding. Under a Standard or Financial Hardship Payment Plan, or a payment plan imposed at hearing in conjunction with an oral agreement to withholding, the licensee agrees the CSED may order income withholding for the monthly amount and for the total support debt named in the plan, without further notice to the licensee. In this way the payment plan operates as a Voluntary Withholding Authorization, except that when the payment plan expires, the CSED may not continue income withholding unless there is another basis for withholding that is already in place (immediate withholding, adjudicated withholding notice, or voluntary authorization). The monthly amount in the plan is calculated as for a regular withholding action (current support plus a payment on the support debt of 1/24th, 25%, or the hardship amount), and payments received under withholding are credited toward the amount due under the payment plan. Where payments actually withheld are less than the payment plan amount (because of Federal Consumer Credit Protection Act limits, a low level of employment, or both), caseworker discretion applies in determining whether the

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licensee substantially complies with the plan or is in default of it (see procedures for default on payment plan in section CS 530.3). Income withholding status does not, in itself, constitute compliance with the payment plan.

CAUTION: Federal and state time frames for income withholding apply regardless of payment plan status. When a Standard or Financial Hardship Payment Plan Agreement or an agreement obtained at a license suspension hearing is being used in place of a required NOI or SNOI, the payment plan or order from hearing must be entered within 15 days after the employer is located (or, if applicable, after a letter of delinquency is issued). Also, the resulting withholding order must be issued within 15 days after the date of entry of the payment plan or order from hearing.

12. If licensee timely takes appropriate action to cure issue alleged in NOISL, prepares form CS-530.2F, Motion and Order for License Suspension Action (MOLSA). Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Proceeds as follows:
 - a. **[DELINQUENCY]** If licensee timely pays noticed support debt in full, requests in MOLSA that debt be declared paid in full. Retains copy of MOLSA in case file and transmits original to OALJ; also attaches updated Debt Computation Worksheet. Takes no further action with respect to delinquency NOISL.
 - b. **[NONCOMPLIANCE]** If licensee timely (with respect to NOISL or later date set in step 14f) complies with subpoena, requests in MOLSA that failure to comply be declared cured. Retains copy of MOLSA in case file and

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transmits original to OALJ. Takes no further action with respect to noncompliance NOISL.

NOTE: Multiple Non-Compliance Issues Treated as One. If the NOISL alleges failure to comply with two or more subpoenas containing different commands, the caseworker should not issue a MOLSA under 12b above until the licensee has satisfied all of the subpoenas.

13. If licensee timely contacts CSED or timely requests hearing, proceeds to step 14. If not, skips to step 18.
14. Responds to timely contact or timely request for hearing from licensee by taking one or more of following actions as appropriate:
 - a. Discussion of Facts and Options. Contacts (or is contacted by) licensee to discuss options following Notice of Intent to Suspend License. Discusses one or more of following topics, as applicable. If after discussion, licensee timely cures the issue alleged in NOISL, returns to step 12.
 - (1) Licensee's reasons for disputing license suspension, including those stated on the Request for License Suspension Hearing.
 - (2) **[DELINQUENCY]** Availability and benefits of payment plan agreement.

NOTE: Option for Use of Assets in Place of (or to Determine) Payment Plan. In certain rare situations where the licensee holds substantial assets that are not reasonably available to the CSED, the CSED may choose not to offer one of the payment plans described in step 14c, 14d, or 14e below, but to request the licensee make use of the assets to pay

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[step 14a, continued]

the noticed debt in full. For example, the licensee may hold assets that are outside the CSED's jurisdiction (such as property on a Reservation), or that are difficult for the CSED to convert to cash (such as a liquor license). If the licensee can liquidate these assets, or use them as collateral to obtain a loan for cash, the CSED may wish to pursue this option instead of accepting smaller payments under an extended payment plan. If the licensee demands a payment plan, and will not make any attempt to use the assets as described above to obtain and pay the full amount, the CSED may choose to offer a plan that requires the entire amount be paid within a few payments. The licensee may dispute any CSED request to liquidate assets or pursue a loan, or any payment plan proposed under this option, at a hearing requested in response to the notice. In all situations of this kind, the caseworker should consult the CSED staff attorney before declining to offer a payment plan from 14c through 14e.

- (3) [RECREATIONAL] For recreational licenses, special consequences of failing to timely resolve notice. Specifically, if the licensee's eligibility is suspended, the suspension will be effective for the duration of the first full cycle of special drawings that occurs after the suspension date, regardless of any action taken by the licensee before or during that cycle. (Of course, any suspension based on a default may be set aside at any time if the conditions in step 27b apply.) The mandatory suspension period

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[step 14, continued]

does not apply to other (non-recreational) licenses, which may be reinstated as soon as the licensee takes appropriate action.

(4) **[NONCOMPLIANCE]** Availability of extended time for compliance, if applicable (see step 14f).

- b. Verification of Debt or Noncompliance. If licensee disputes amount of support debt or facts of noncompliance alleged in NOISL, verifies payments, case facts, or other information.
- c. **[DELINQUENCY]** Standard Payment Plan. If licensee agrees support debt is greater than six months' support payments, and wishes to enter into regular payment plan, prepares form CS-530.2E, Standard Payment Plan Agreement. Specifies licenses to which agreement applies (document must include all licenses for which licensee has been noticed; if licensee agrees, document may include unnoticed licenses as well). Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Prepares and attaches Debt Computation Worksheet, and sends by regular mail to licensee.

NOTE 1: Acknowledgment of Additional Debt Not Required. If the licensee wishes to enter into a payment plan agreement, and additional support debt has accrued since the date of the notice, the caseworker should attempt to obtain the licensee's agreement to the total amount. However, if the licensee will not

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[step 14, continued]

agree to the additional amount, the amount specified in the notice--or shown to be correct after considering proof of payments and other information--should be used. The caseworker should not request a default on the NOISL solely because the licensee will not sign a payment plan that includes support debt accrued subsequent to the date of the NOISL.

NOTE 2: Payment Date Adjustable. If the licensee wishes to enter into a payment plan agreement, but is prevented from doing so by the language requiring payment by the 15th of every month, the caseworker may revise the payment plan document to specify a different monthly payment date for the licensee. This revision should be available only for good reason, however, as payments delayed until the second half of the month can contribute to "date of collection" problems in system accounting.

- d. [DELINQUENCY] Financial Hardship Payment Plan. If licensee agrees support debt is greater than six months' support payments, but alleges regular payment plan is not affordable, obtains completed, signed and notarized form CS-404.6A, Financial Affidavit. Based on information contained in financial affidavit and information available from regular CSED sources, calculates amount to be paid toward support debt using form CS-510.5B, Hardship Adjustment Worksheet. Prepares and mails form CS-530.2E, Financial Hardship Payment Plan Agreement, with an attached Debt Computation Worksheet by regular mail to licensee. (See special instructions in step 14c for preparing agreement document; see NOTES following step 14c in determining debt amount and payment date to be included in agreement.)

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[step 14, continued]

NOTE 1: Failure to Provide Financial Affidavit. If the licensee fails or refuses to provide information contained in the financial affidavit when specifically requested to do so by the caseworker, the refusal may be deemed a refusal to enter into an approved payment plan, and default procedures beginning with step 17 would apply.

NOTE 2: Duration of Financial Hardship Agreement. In general, the hardship adjustment period will not exceed two years. If the payment plan is being used to take income withholding action as in step 11, the hardship adjustment period generally will not exceed one year (the standard hardship adjustment period for income withholding).

- e. **[DELINQUENCY] Alternative Payment Plan.** If upon receiving proposed Financial Hardship Payment Plan (step 14d) licensee alleges the proposed monthly amount is not affordable given available monthly income, **and licensee produces convincing evidence of this claim,** discusses alternative payment plan with licensee. Discussion should include relevant details of licensee's financial situation, and any non-monetary commitments CSED may require of licensee. Explains that if income withholding applies (see NOTE below), amounts withheld--as stated in separate withholding notice and any adjustments allowed by law--may be higher than payment plan amounts. Determines suitable monthly payment amount and any other special terms of agreement, and obtains supervisor's approval. Prepares and mails form CS-530.2E, Alternative Payment Plan Agreement with an attached Debt Computation Worksheet by regular mail to licensee. (See special instructions in step 14c for preparing

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[step 14e, continued]

agreement document; see NOTES following step 14c in determining debt amount and payment date to be included in agreement.)

NOTE 1: Alternative Payment Plan Amounts Not Subject to Income Withholding Minimums. The CSED is required by law, when ordering income withholding, to order amounts that are at least equal to current support. License suspension, however, is governed by separate requirements, and payment plan amounts may be approved for less than current support. When this occurs, any separately ordered income withholding will be higher.

NOTE 2: Alternative Payment Plan for Unusual Situations Only. An Alternative Payment Plan may be proposed only in highly unusual situations where it is clear the licensee could not meet the monthly payments of a Financial Hardship Payment Plan, where no other enforcement tools are available for collecting support, and where it is likely the licensee will abide by the terms of the agreement. The agreed monthly payment may be any amount up to the amount calculated for financial hardship; in extreme situations the amount may be even less than current support. The duration of the agreement should be limited to the time necessary for the licensee to improve his payment position, typically 6 months or less. When indicated, the agreement should include additional terms requiring the licensee to demonstrate a good-faith effort to work with the CSED; for example, the agreement may require the licensee to contact the caseworker on a regular basis, to report on progress or confirm payment intentions.

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[step 14, continued]

- f. [NONCOMPLIANCE] Extended Period for Compliance. Where licensee agrees--and there is reason to believe licensee truly intends--to comply with CSED subpoena, but external factors will not allow compliance within NOISL response period, negotiates plan for compliance at earliest practical time, including specific actions and dates. Prepares and sends to licensee form CS-530.2H, License Suspension Letter Confirming Compliance Agreement, and monitors for compliance. If individual complies, proceeds as in step 12b. If not, proceeds to step 17a; mandatory Notice of Default applies.
- g. Dismissal of Notice. If contact with licensee reveals any of the following situations applies, dismisses Notice of Intent to Suspend License by preparing and forwarding to OALJ form CS-401.3F, Motion and Order to Dismiss Administrative Notice:
- (1) The identity of the person served is verified not to be the licensee.
 - (2) [DELINQUENCY] The licensee provides proof that the support debt did not equal or exceed six months' support at the time the notice was served.
 - (3) [DELINQUENCY] At the caseworker's discretion in step 11c, there is good reason to drop the action based on the licensee's expected full cooperation with income withholding and associated payment of the support debt.
 - (4) [NONCOMPLIANCE] The licensee provides proof that he or she had already complied with the subpoena when the notice was served, or that the CSED should not have issued the subpoena.
 - (5) One or more of the conditions in steps 3b

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through 3e apply, and the CSED determines license suspension is not appropriate or would not be effective.

15. [DELINQUENCY] If payment plan agreement is signed and returned by licensee, prepares stuffers, makes file copy of agreement, and transmits original with stuffers and copy of Debt Computation Worksheet (and, for Financial Hardship Payment Plan, copy of hardship adjustment worksheet) to OALJ for review and (if appropriate) approval. Diaries for approval and monitors for compliance in the interim. Upon approval (step 19), sets any ticklers needed to monitor compliance with payment plan. Also, if payment plan is being used in step 11 to initiate or modify income withholding, performs SEARCHS processing as if for VWA. Proceeds to section CS 530.3.
16. If Request for License Suspension Hearing is received in regional office, immediately faxes to OALJ, makes copy for case file, and sends original to OALJ with evidence of date received. Skips to step 21.
17. If licensee has timely contacted caseworker in person, by telephone, or in writing following service of NOISL, but by end of response period (or later date set by caseworker in step 14f) has not paid the noticed debt in full, signed a payment plan agreement, complied with the subpoena, or requested a hearing, takes action in 17a or 17b below, depending on circumstances of case:
 - a. If regional policy allows and if, in the discretion of the caseworker, further formal contact would prompt the licensee to request a hearing, enter into a payment plan, pay the support debt in full, or comply with the subpoena, prepares and mails form CS-405.4, Notice of Default, adjusting language for license suspension situation. Sets SEARCHS

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tickler for 10 working days plus an additional three calendar days. If licensee timely requests a hearing, enters into a payment plan, pays the debt in full, or complies with the subpoena, proceeds to appropriate step following service of NOISL. If not, proceeds to step 18.

- b. If regional policy or caseworker discretion precludes the use of a Notice of Default in this case, proceeds to step 18.
- 18. If by end of response period (or later date set by caseworker) licensee has not paid noticed debt in full, signed payment plan agreement, complied with subpoena, or requested hearing, prepares form CS-530.2F, Motion and Order for License Suspension Action, requesting license suspension based on default. Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Prepares stuffers, with additional stuffer showing name and address of licensing authority, and sends package to OALJ. Retains copy in case file and diaries return. Upon entry of decision and order suspending license (step 19), proceeds to step 27.

NOTE: [DELINQUENCY] Less Than Full Payment of Support Debt. If no payment plan agreement has been received from the licensee, and a payment was received after the date of service of the Notice of Intent to Suspend License, even though it reduced the support debt alleged in the notice to less than six months' support payments, suspension is still appropriate, and the CSED will proceed with a default.

Hearing
Officer

- 19. Upon receipt of Motion and Order for License Suspension Action or signed payment plan agreement,

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reviews document and enters decision and order as appropriate. Skips to step 25.

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20. Upon receipt of Request for License Suspension Hearing from licensee, determines date of service of Notice of Intent to Suspend License, and ending dates for timely response. **"Timely" response** is response received 60 calendar days or fewer after NOISL date of personal service; for certified mail, timely response is response received 63 calendar days or fewer after date of mailing, or 60 days or fewer after date licensee signs return receipt, whichever allows for later response; for regular mail, timely response is response received 63 calendar days or fewer after date of mailing.

- a. If Request for License Suspension Hearing was timely received, or was received untimely and decision and order suspending license for default has not been issued, grants hearing and proceeds to step 22.

NOTE: Suspension Stayed Pending Hearing. Suspension of the license in the case is automatically stayed pending the outcome of a timely requested hearing; an order specifically entering a stay in this situation is not required. (Note that in the case of a hearing scheduled for after the date of the CSED's report to FWP (step 28), the licensee will be eligible for that year's drawings even if the NOISL was served before the report to FWP was run; the decision and order from the hearing will affect the next year's eligibility.)

- b. If Request for License Suspension Hearing was received untimely and decision and order suspending license for default has been issued, prepares order denying hearing for

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untimeliness. Mails copies to licensee, licensee's attorney, and CSED caseworker, and files original.

NOTE: Post-Suspension Request Treated as Request for Stay. If in the discretion of the hearing officer the Request for License Suspension Hearing was intended as an application for "after the fact" relief from the suspension--that is, as a request for a stay, or for a set-aside of the default--the hearing officer may inform the licensee the request will be treated as a request for a stay or set-aside hearing unless the licensee withdraws it. Procedures for granting and conducting a license suspension stay or set-aside hearing are given in section CS 530.3.

NOTE: [DELINQUENCY] Hearing Declined in Favor of Payment Plan. If the OALJ receives and approves a signed payment plan agreement in a case where a hearing is requested, the OALJ prepares and sends a letter to the requesting party explaining that a hearing is unnecessary. If a date has been set for the requested hearing, the OALJ dismisses the hearing date. (A note from the caseworker reminding the OALJ a hearing has been requested may be helpful.)

Caseworker 21. Upon being informed by OALJ of license suspension hearing (step 22), prepares list of witnesses with names and telephone numbers. Checks SEARCHS records to see if any telephone numbers should be protected; if so, makes arrangements with individual to provide alternate number for contact purposes (alternate number may be different from number to be used for hearing).

Determines exhibits due date; prepares exhibits; makes copies of exhibits and of witness and exhibits list for all participants plus case file; sends to participants, with originals to OALJ, by

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due date. Arranges for witnesses' appearance at hearing.

Prepares testimony for hearing. If in previous conversations licensee has indicated intent to claim **financial or resultant hardship**, prepares additional testimony, exhibits, etc. to rebut or support hardship as appropriate. If licensee introduces hardship claim at hearing without prior indication, determines whether additional time is necessary to prepare for hardship case; if so, moves for continuance to prepare case as in section CS 530.3 for stay hearing.

NOTE: Option for Scheduling Noncompliance Hearing Before Delinquency Hearing. If a hearing is requested on a delinquency NOISL, and a noncompliance NOISL has been served against the same licensee in the same case **and** the caseworker believes it would be beneficial to resolve the noncompliance issue before the delinquency issue (for example, if the subpoenaed information is needed to prepare for the delinquency hearing), the caseworker may request that any noncompliance hearing be scheduled ahead of the delinquency hearing.

- OALJ 22. Prepares and issues Notice and Order for Hearing, scheduling date and time for hearing (see NOTE after step 21). Copies hearing notice and order, files original, and mails copies with attached hearing instructions to licensee, licensee's attorney, and caseworker.
- Hearing Officer 23. Conducts administrative hearing as follows:
- a. If licensee appears for hearing,
- in all cases, determines whether allegations in NOISL are true (licensee owes support debt in amount greater than or equal to six months' support obligation; licensee has not complied

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- with CSED subpoena).
- at licensee's request, also determines whether financial or resultant hardship applies; if applicable, determines appropriate payment or compliance plan. Issues decision and order giving results of above determinations and, if applicable, imposing payment or compliance plan.

NOTE: Hearing Issues. In most hearings the delinquency issues are limited to whether a support debt exists, and if so, the amount of the support debt or support obligation, and whether the licensee has entered into a payment plan. Noncompliance issues are mainly whether the licensee has complied with a CSED subpoena, or whether the licensee was been afforded reasonable opportunity to comply. If the licensee has raised an issue of financial or resultant hardship, the hearing officer may hear testimony and arguments, including testimony and information from the other parent or the custodian, and receive other evidence of the licensee's hardship claim.

- b. If licensee does not appear for hearing, determines whether licensee owes support debt in amount greater than or equal to six months' support obligation, or has failed to comply with CSED subpoena. (Considers any hardship defenses or requests for payment plan by licensee to be without merit.) Issues decision and order based on delinquency or noncompliance determination only.

OALJ

- 24. Upon entry of license suspension hearing decision and order, completes Certificate of Mailing listing name and address of licensee and licensee's attorney. (Checks SEARCHS for any reason to protect address of licensee--if found, removes address before printing decision and order.) Elsewhere in document lists names of individuals to

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receive regular copies. Obtains signature of hearing officer on final decision and order. If necessary for use in step 26, obtains name and address of licensing authority from caseworker.

25. For decision and order entered in step 19 or step 23, copies complete document containing signed decision and order; files original; and mails copies to individuals listed in Certificate of Mailing or shown as receiving regular copies.
26. Determines status of licensee's license with licensing authority and proceeds as in 26a or 26b below.
 - a. [DRIV/PROF/OCC] If decision and order changes license status with licensing authority, prepares appropriate version of form CS-530.2G, Notice to Licensing Authority (see below), and obtains signature of hearing officer. Mails certified copy to licensing authority, certified mail, return receipt requested, and files original.

The "appropriate version" of the Notice to Licensing Authority in this step will be either the version suspending the license or the version lifting the stay of license suspension (other versions apply in section CS 530.3). The version lifting the stay applies only if, in **another case**, the licensee's license was previously suspended and then the suspension was stayed with the licensing authority.

NOTE: Notice to Licensing Authority Not Necessarily Same as Decision and Order. Because a CSED decision and order applies only to the particular case, or because in certain situations a CSED decision and order merely preserves the existing license status in the case, the corresponding notice (or lack of

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notice) to the licensing authority may appear not to reflect the intention of the decision and order. See section CS 530.3 for further explanation.

- b. [RECREATIONAL] If licensee's eligibility for recreational licenses is being suspended, enters event for suspended FWP eligibility, identifying licensee (by role in case) and applicable license year. (For licensees who are not participants in case in which action is being brought, maintains manual list, and adds to list submitted in step 28 at appropriate time.)

NOTE: Termination Based on Default Set-Aside. In the rare event that suspension of the licensee's eligibility is terminated (that is, eligibility is reinstated) because the suspension was the result of a default that is later set aside (see step 27b), it is the responsibility of the OALJ to arrange for the SEARCHS event in step 26b above to be deleted.

- Caseworker 27. If action in step 19 or 23 results in license suspension, proceeds in steps 27a through 27c as applicable.
- a. Enters appropriate SEARCHS case note and, at caseworker's discretion, adds message to CSU screen saying license is suspended and any call from licensee should be transferred to caseworker. (Removes message when all suspensions in case are stayed or terminated, or when direct conversation with licensee no longer needed.)
- b. Where the suspension is based on a default on the NOISL, and the licensee contacts the CSU claiming good reason to set aside the default (or making any equivalent comment or assertion), consults CSU regional legal staff

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and, if appropriate, and except as noted below, refers licensee to OALJ for determination. Default orders on CSED notices are generally "set aside" only for reasons of mistake, inadvertence, surprise, or excusable neglect. The most common examples of these reasons include (1) the licensee did not receive the notice, (2) the licensee received the notice but an extraordinary intervening event, or the physical or mental incapacity of the licensee, prevented a timely response, or (3) the licensee responded but the CSED did not hear of the response. Note that the relief in this step applies to recreational as well as non-recreational licenses. However, if the set-aside is too late to reinstate the licensee's eligibility for recreational licenses in the next drawing cycle (see steps 28 and 29), the relief may be of no practical value.

EXCEPTION: If there is clear evidence of reason (1) or (3) above, the caseworker may elect to initiate the set-aside action through a MOLSA, according to the procedures in section 530.3.)

- c. [DRIV/PROF/OCC] Sets tickler for 60 days to send reminder letter to licensee.

CSED Central
Office

28. [RECREATIONAL] At appropriate time each year prepares list of licensees ineligible for special drawings held that year, obtains any manual additions from OALJ, and submits list to FWP for match with applications received. List should contain all licensees for whom events were entered in step 26b, with any duplications removed. SPECIAL TIMING CONSIDERATIONS: To ensure list includes maximum number of suspension events, report should be run on latest practical date that will still allow submission to FWP by specified due date.

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29. [RECREATIONAL] Upon receipt each year of list of ineligible licensees from CSED, for each special drawing in that year matches licensees on CSED list with applications received for drawing. For each match found, removes name from eligibility and processes refund as applicable.

Caseworker

30. [RECREATIONAL] If licensee was included in list submitted in step 28, proceeds as applicable in steps 30a and 30b below.

- a. On or about September 1 of the year for which eligibility was suspended, reviews case to determine whether licensee has taken appropriate actions relating to basis of suspension (paid noticed debt in full, entered into payment plan, obtained stay at hearing, or complied with subpoena). If so, and no new basis for action has arisen, takes no further action in this section (if licensee is subject to stay or payment plan, procedures in section 530.3 still apply).
- b. If licensee has not taken appropriate action, or if new basis for suspension action has arisen, follows procedures in this section beginning with step 1 to determine whether to initiate suspension action against next year's eligibility.

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
ADMINISTRATIVE LICENSE
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SUPERSEDES: CS 530.3, Changes in Suspension Status,
August 1, 1996.

REFERENCES: MCA 40-5-701 et seq.

DEFINITIONS: Definitions for the terms used in this section are given
in section CS 530.1.

POLICY: After the Notice of Intent to Suspend License (NOISL) is
initially resolved under the procedures in section CS
530.2, the CSED may take further action as follows:

- (1) Stay a license suspension if the suspension is
creating a significant hardship, or if the licensee
enters into an approved payment plan.
- (2) Suspend a license if the licensee fails to abide by
the terms of a payment plan or by the conditions of
a stay. (To suspend a license where a stay is in
effect, the CSED must lift the stay.)
- (3) Terminate a license suspension if the licensee pays
the entire debt, or cures the noncompliance,
associated with the original suspension action.

This section contains procedures for determining whether
the above actions are appropriate, and for taking actions
that apply.

In the following procedures **BOLDED CAPITAL LETTERS** at the
beginning of a step indicate the following special
restrictions:

DELINQUENCY The step applies **only** when the basis for
license suspension is a delinquency.

NONCOMPLIANCE The step applies **only** when the basis for
license suspension is noncompliance with
a subpoena.

(Steps without **DELINQUENCY** or **NONCOMPLIANCE** designations
apply for either basis of action.)

RECREATIONAL The step applies **only** when the "license"
in question is the person's eligibility
for a special permit.

DRIV/PROF/OCC The step applies **only** for non-

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recreational drivers,' professional, and
occupational licenses.

(Steps without **RECREATIONAL** or **DRIV/PROF/OCC** designations
apply for any license type.)

PROCEDURES:

RESPONSIBILITY	ACTION
Caseworker	1. Monitors outcome of procedures in section CS 530.2 (resolution of NOISL) and takes action in step 1a, 1b, or 1c below. Also proceeds in steps 1d and 1e, and in step 2, as applicable. a. If license suspended under section CS 530.2, and - licensee contacts regional office objecting to suspension, proceeds to step 3. - licensee requests stay hearing, proceeds to step 5. - licensee does not contact CSED or request hearing, proceeds as described below according to license type: > [DRIV/PROF/OCC] Within approximately 60 days after suspension, prepares and sends to licensee form CS-530.3B, License Suspension Reminder Letter. If licensee responds, proceeds as in step 3; if not, takes no further action. > [RECREATIONAL] Takes no further action. b. If payment plan approved under section CS 530.2, proceeds to step 6. c. If license suspension stayed by order resulting from hearing under section CS 530.2,

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[step 1, continued]

proceeds to step 7.

- d. If **additional license** is discovered after NOISL is resolved or payment plan agreement is entered, determines whether action against the additional license is likely to produce some additional enforcement benefit in the case. If so, issues new NOISL for additional license only, and proceeds as in section CS 530.2; where applicable, coordinates with original action at resolution stage.

CONSIDERATIONS: (1) A new NOISL may be issued only when the conditions in section CS 530.2 for initiating license suspension are met (there is a six-month delinquency, or the licensee is out of compliance with a CSED subpoena). (2) If there is a payment plan already in place, the caseworker may wish to refrain from taking any default action on the new NOISL as long as the licensee is making payments under the existing agreement. (3) If as a result of the new NOISL a combined payment plan is offered listing the licenses subject to the original action as well as the licenses subject to the new action, the following limitation applies: The debt acknowledged in the combined agreement may not be greater than the debt noticed or acknowledged for any of the licenses listed, less payments received, unless the licensee agrees to a higher amount.

- e. If **new basis** for suspension arises while suspension, payment plan, or hearing stay is in effect based on original NOISL, determines whether new action is likely to produce positive enforcement effect. If so, with supervisor's approval issues new NOISL alleging new basis of action, and proceeds as

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in section CS 530.2. If not, takes no new action at this time. ("New" basis means either (1) noncompliance with a CSED subpoena, where the action required by the subpoena has not been the subject of any previous NOISL, or (2) accrued debt equal to six months' support obligation, where no part of the debt has been included in any previous NOISL.)

2. **[DELINQUENCY]** If at any time **after** resolution of Notice of Intent to Suspend License in section CS 530.2 an employer or payor is identified for the licensee, proceeds as follows:
 - a. If at time payor is identified licensee has already entered into approved payment plan authorizing withholding (that is, Standard Payment Plan Agreement or Financial Hardship Payment Plan Agreement--not Alternative Payment Plan Agreement), or has already agreed to withholding at license suspension hearing where payment plan was imposed, issues Order to Withhold Income as in section CS 510.1 for amount in payment plan, and proceeds to monitor collections. See NOTE and CAUTION in step 11, section CS 530.2 for use of payment plan as Voluntary Withholding Authorization. If necessary (no other authorization for withholding exists), takes action to continue withholding when payment plan expires. Withholding action may include NOI, SNOI, Voluntary Withholding Authorization, or new payment plan, as appropriate.
 - b. If at time payor is identified licensee has not agreed to withholding as in step 2a, proceeds as applicable in sections CS 510.1 through 510.20 to obtain withholding for entire support debt.
 - c. **[DRIV/PROF/OCC]** If stay hearing occurs at some point in license suspension process (step 14),

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[step 2, continued]

requests hearing officer take one of following actions as appropriate to status of income withholding process in case:

- (1) Require continued participation in income withholding as a condition of any stay resulting from hearing; or
- (2) Seek licensee's voluntary agreement to income withholding for any payment plan imposed at hearing where amounts in payment plan meet Montana income withholding requirements. (If the licensee refuses to agree to income withholding in this situation the CSED cannot compel it within the license suspension process.)

NOTE: License Suspension Not Discontinued. Once the Notice of Intent to Suspend License is resolved under section CS 530.2 (by entry of a payment plan, suspension of the license, or a stay of license suspension), the CSED will not discontinue the license suspension remedy simply because income withholding becomes available. A suspension cannot be stayed or terminated solely on the basis of withholding collections; likewise, under a payment plan or other stay, the licensee's license can be suspended for default regardless of whether withholding is in place.

The above NOTE notwithstanding, income withholding can have certain indirect effects on license suspension, namely:

- (1) Payments collected through withholding are credited to any existing payment plan.
- (2) If an existing suspension is detrimental to continued collection through income withholding (for example, the licensee will lose his job if his driver's license remains suspended), the caseworker may move for a stay (step 10i); the conditions of the stay must

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include continued participation in income withholding, and the caseworker must move to lift the stay if employment ceases.

3. If licensee contacts regional office objecting to suspension of license, proceeds in 3a or 3b below, according to license type.

- a. [DRIV/PROF/OCC] Explains options for relief of suspension (payment plan, payment in full, compliance with subpoena, hearing to stay suspension). If suspension was for default, where applicable coordinates explanations and procedures in this step (3a) with any required in step 3c.

If contact is of emergency nature skips to step 4.

Attempts to obtain licensee's agreement to payment plan (see procedures in section CS 530.2), full payment, or compliance with subpoena, and proceeds as follows:

- i. If licensee pays debt in full or complies with subpoena, proceeds to step 8.
 - ii. If licensee agrees to and signs payment plan, proceeds to step 9.
 - iii. If licensee will not agree to payment plan and does not make payment in full or comply with subpoena, directs licensee to send request for hearing in writing to OALJ; explains hearing unlikely to be granted unless resultant or (for delinquency cases) financial hardship exists. If hearing requested, proceeds to step 5; if not, takes no further action.
- b. [RECREATIONAL] Explains special restrictions in (1) and (2) below. If suspension was for default, where applicable coordinates

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explanations in this step (3b) with any procedures required in step 3c.

- (1) The suspension must, by law, remain in effect for one complete cycle of special drawings within the same license year, regardless of any action taken by the licensee before or during that time.
- (2) If the licensee takes appropriate action before the CSED issues the notice for the **next** year's suspension, eligibility will be returned beginning with that year.

c. If suspension was for default, and licensee states or implies any circumstances that **may** be grounds for setting aside default (see section 530.2, step 27b), or if caseworker knows of any such circumstances, proceeds as follows:

- i. If caseworker can determine for a fact that NOISL was not received by licensee, or that licensee did timely request hearing, moves for CSED decision and order according to procedures in step 10i.
- ii. If step 3c(i) above does not apply (determination by CSED Administrative Law Judge is required), informs licensee he or she may request relief by sending written request to OALJ stating reasons license suspension default order should be set aside.

4. **[DRIV/PROF/OCC]** In emergency situation (see NOTE below) determines if one or more of following conditions apply:

- (1) There is reason to believe licensee will work with CSED to enter into payment plan, pay debt in full, or comply with subpoena.
- (2) There is reason to believe CSED should not have suspended licensee's license, based on identity, debt amount, or compliance facts.

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- (3) There is reason to believe licensee may qualify for stay or termination based on finding by hearing officer (resultant hardship, default set-aside) and licensee agrees to request hearing if necessary.
- (4) Any other circumstances exist where temporary stay of suspension will facilitate collection of support debt or compliance with subpoena.

If so, prepares motion in step 10d for immediate stay of license suspension pending further investigation or hearing, as applicable, and including appropriate ending date. Concurrently, contacts OALJ to expedite motion, decision and order, and Notice to Licensing Authority, to obtain fastest possible relief. (This may involve extra steps by fax, telephone, or hand-delivery.)

Upon obtaining temporary stay, works with licensee to enter into payment plan agreement (using procedures in section CS 530.2, step 14c through 14e), request hearing, or terminate suspension. If efforts not successful, allows stay to expire and license to again be suspended.

NOTE: Emergency Situation Defined. At the discretion of the caseworker an "emergency situation" exists if suspension of the licensee's license has had a sudden practical and adverse effect, and pursuing relief through regular CSED procedures would be unreasonable in the circumstances. EXAMPLES: (1) The licensee is a truck driver who has been stopped en route in another state, and is being held for driving without a license. The licensee cannot make arrangements to enter into a payment plan until he or she can return home to assemble and submit the necessary financial information. (2) The licensee is the only physician or only applicable specialist in a geographical area, and a replacement is not

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immediately available.

5. If licensee requests hearing with OALJ to stay license suspension, proceeds as in 5a or 5b below according to license type.
 - a. [DRIV/PROF/OCC] Contacts licensee and attempts to obtain cooperation in (1) or (2) below, as applicable:
 - (1) [DELINQUENCY] Licensee's signed agreement to payment plan, using procedures in section CS 530.2, steps 14c through 14e (omit if attempt already made in step 3 or 4 above). If licensee agrees to and signs payment plan, proceeds as in step 9.
 - (2) [NONCOMPLIANCE] Licensee's compliance with subpoena. If licensee complies, proceeds as in step 10.
If contact does not result in action in (1) or (2) above, proceeds to step 14.
 - b. [RECREATIONAL] If necessary, contacts licensee and explains CSED cannot stay suspension of recreational license eligibility after the suspension is entered. However, the licensee may avoid suspension for the **next** drawing cycle by taking appropriate action (payment plan, payment in full, compliance with subpoena) in response to the original notice. To request a hearing the licensee must wait for the CSED to issue the next year's notice against the licensee's recreational licenses.
6. [DELINQUENCY] Upon entry of approved payment plan, monitors payment plan for compliance with terms, declining balance of acknowledged debt, expiration according to terms, and any changes in circumstances of case.
 - a. If payment plan dollar amount becomes inappropriate because
 - support order is modified while payment

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[step 6, continued]

- plan is in effect, or
- CSED authority to enforce current support changes while payment plan is in effect, or
- licensee's financial condition improves--or declines, and licensee requests new plan--while Financial Hardship or Alternative Payment Plan Agreement is in effect,

prepares new payment plan as in step 6d and attempts to obtain licensee's signature. If licensee signs, proceeds as in step 9. If licensee will not sign, determines whether existing plan should be retained and, if so, whether separate income withholding action is needed (see NOTE following step 10a for these determinations).

If existing plan is retained, takes separate withholding action if necessary; for cases of modified support order or change in CSED authority to enforce current support skips to step 11, for other cases takes no further action. If existing plan is not retained, proceeds as in step 10a.

- b. If licensee fails to abide by terms of payment plan (defaults), reviews circumstances of default, if necessary contacts licensee to clarify or negotiate situation, and takes action in **one** of steps 6b(i) through 6b(iii) below.
- i. Moves to suspend license (proceeds to step 10b); following suspension, proceeds as in step 1a except that for any new payment plan offered to licensee, the following provisions also apply:

- (1) At the caseworker's discretion the

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new payment plan may require the licensee to repay some or all of the total payments missed under the original payment plan (or a higher amount up to the amount of the original debt less any payments applied to it). Repayment may be in addition to regular monthly payments, and may be payable as a lump sum or in installments. (It may be necessary to add special terms for repayment, in writing, to the payment plan agreement--consult the supervisor or CSED staff attorney.)

- (2) The debt acknowledged in the new payment plan must be limited to the amount acknowledged in the original payment plan less any debt payments applied to it.
- ii. Sends letter to licensee explaining licensee is in default of payment plan, and license may be suspended unless licensee repays full amount of missed payments by a specified date. At caseworker's discretion, letter may require repayment in one payment or in installments; repayment amount may be limited to amount of missed payments now at issue, or may include amounts of any earlier missed payments for which default was waived. Generally, the time allowed for repayment should not extend beyond the original ending date of the payment plan. Takes action according to licensee's response to letter, as follows:
- A. If licensee repays missed payments,

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- takes no further action on default; continues to monitor payment plan.
- B. If licensee contacts CSED to discuss missed payments but does not repay, at caseworker's discretion either waives default (step 6b(iii)) or moves for suspension (step 6b(i)).
 - C. If licensee does not repay missed payments or contact CSED, moves for suspension (step 6b(i)).
- iii. Takes no action on default; continues to monitor existing payment plan. Arranges for collection of missed payments as follows:
- A. If existing plan is Standard Payment Plan Agreement, recalculates required duration of payment plan to include one additional month for each payment missed, and adjusts payment plan ticklers accordingly.
 - B. If existing plan is Financial Hardship or Alternative Payment Plan Agreement, allows existing expiration date to stand; includes only arrears portions of missed payments in total debt amount of any new payment plan offered at expiration of existing plan.

NOTE 1: "Default" Defined. For purposes of action under this step, a default does not exist until the month in which the payment (or other required licensee action) is due has ended and SEARCHS month-end processing reveals no payment was received. Generally, the caseworker will also take into account the date and due date of the last payment

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[step 6b, continued]

received, to determine whether the licensee has truly "missed" a payment for practical purposes.

NOTE 2: Caseworker Discretion in Taking Action on Default. Upon determining a default exists, the caseworker has the option of prosecuting the default (step 6b(i) or 6b(ii)) or waiving the default in consideration of special facts and circumstances (step 6b(iii)). Generally the CSED will consider waiving a default when a waiver would allow for, or aid in, the continued, regular collection of payments under the existing payment plan. Additional factors in the decision to waive a default may include the following:

- (1) Length of time licensee abided by order before failing to pay
- (2) Past payment history
- (3) Good cause for failing to make payments (for example, medically verifiable temporarily disabling injury that prevents the licensee from earning income)
- (4) Whether licensee is still engaging in licensed activity or will return to licensed activity
- (5) Effect of federal Consumer Credit Protection Act limits on income withholding payments, if applicable
- (6) Potential CSED error in processing payment.

NOTE 3: Delayed Action on Default Not Permitted. A caseworker "waives" a default on a payment plan by taking no action in 6b(i) or 6b(ii) by the end of the month following the month in which the payment (or other required

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licensee action) was due. Once a particular default is waived, any later action to suspend the license based solely on that default is prohibited by CSED policy.

NOTE 4: Accounting for Missed Payments. When a licensee defaults on a payment plan, the additional debt that accrues as a result of the missed current support payment may not be added to the debt payable under the license suspension action. If the CSED waives the default, the missed payment is collected as in step 6b(iii). If the CSED takes the default, the missed payment is collected as in step 6b(i) if and when the licensee enters into a new payment plan staying the suspension.

- c. If payment plan contains specific expiration date, prepares new payment plan as in step 6d and attempts to obtain licensee's signature before existing plan expires. If licensee signs, proceeds as in step 9. If licensee will not sign, skips to step 10a.
- d. When it is necessary in step 6a or 6c above to prepare a new payment plan to replace an existing plan, obtains updated Financial Affidavit or other financial information as appropriate; discusses any new or changed circumstances with licensee; and determines appropriate plan type and calculates monthly payment amount as in section CS 530.2. If licensee does not provide requested financial information, proceeds as for refusal to sign new plan in step 6a or 6c.

NOTE: New Standard Payment Plan Agreement Not Limited to 1/24th of Remaining Debt. In calculating the debt portion of the monthly payment for a Standard Payment Plan Agreement

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being prepared in 6a or 6c above,

- if the existing plan is a Standard Payment Plan Agreement, the CSED will retain the debt payment amount from the existing plan.
- if the existing plan is a Financial Hardship or Alternative Payment Plan Agreement, the CSED will calculate the debt payment amount at 1/24th of the debt acknowledged in the existing plan.

e. If licensee continues payments until acknowledged debt paid in full, proceeds to step 8.

7. Upon entry of order resulting from hearing in section CS 530.2 staying license suspension and imposing terms of stay, monitors for compliance by licensee and for continued basis of stay. If noncompliance (with hearing order) occurs or basis of stay ceases to exist, proceeds to step 10e for motion to lift stay.

[DELINQUENCY] If terms of stay include any type of periodic payments (imposed payment plan), and support order is modified, or CSED authority to enforce current support changes, or licensee's financial condition improves (or declines, and licensee requests new terms) while stay is in effect, prepares new payment plan as in step 6. If licensee signs new plan, proceeds to step 9. If licensee will not sign new plan, determines whether motion to lift stay is appropriate (see Table 1, Payment Plan Provisions). If so, proceeds to step 10e. If not, for modified support order or change in CSED authority to enforce current support, proceeds to step 11; otherwise takes no further action on this issue, and continues to monitor imposed payment plan.

8. [DRIV/PROF/OCC] If licensee pays debt in full or complies with CSED subpoena, moves for CSED

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decision and order according to procedures in step 10f or 10g as follows:

- a. If debt is paid or compliance is obtained while license is suspended or suspension is stayed, moves for termination of suspension.
- b. If debt is paid or compliance is obtained before license is ever suspended in case, moves for declaration debt is paid in full, or declaration licensee has complied in full.

NOTE 1: [DELINQUENCY] Payment/Collection Type. "Payment" may be accomplished by any accepted method of payment or collection, with or without an approved payment plan. **CAUTION:** Certain types of collections (tax offsets, writs of execution, for example) are tied to specified debt periods. To the extent these debt periods are not included in the period covered by the noticed or acknowledged license suspension debt, the collection is not considered a payment on the license suspension debt.

NOTE 2: [DELINQUENCY] Payment in Full Defined: Additional Debt Not Included. For purposes of license suspension, "payment in full" occurs when the licensee has paid an amount toward the license suspension debt that is equal to the amount contained in the Notice of Intent to Suspend License, or equal to the amount contained in an approved payment plan if higher. If the licensee accrues or the CSED discovers additional debt after the NOISL is served, and the additional amount is not included in a payment plan, the additional amount may not be used to increase the total amount payable under this action. **To enforce the additional debt by license suspension action, see step 21.**

9. [DELINQUENCY] If licensee signs payment plan proposed by CSED, prepares and attaches Motion and Order for License Suspension Action if applicable (see step 10), provides necessary stuffers, and

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sends package with copy of Debt Computation Worksheet (and, for Financial Hardship Payment Plan, copy of Hardship Adjustment Worksheet) to OALJ for approval. Retains copy in case file and diaries return. Upon approval (step 13) proceeds to monitor new plan as in step 6.

10. When any of the situations in 10a through 10j occurs, prepares form CS-530.2F, Motion and Order for License Suspension Action (MOLSA), specifying motions as shown. Specifies licenses to which motion applies. NOTE: Licenses listed in the MOLSA may be from different notices or payment plans as long as (1) all the notices or payment plans were issued on the same basis of action (a delinquency, or a noncompliance), (2) all the notices or payment plans are listed individually at the appropriate locations in the MOLSA, and (3) the exact same motion applies to all the licenses for the exact same reason.

Ensures Certificate of Mailing lists name and address of licensee and licensee's attorney; ensures list of regular copies includes names of other parent or custodian, parent or custodian's attorney, other state if applicable, and CSED caseworker. Attaches any documents specified in MOLSA (coordinates with step 9 if payment plan is being submitted); provides necessary stuffers, plus additional stuffer showing name and address of licensing authority; and sends package to OALJ. Retains copies of MOLSA and any attachments in case file; diaries return; and proceeds to step 20.

- a. [DELINQUENCY] Existing payment plan becomes subject to expiration for one or more of following reasons, and licensee either refuses to enter into new payment plan proposed by CSED or refuses to provide financial information requested by CSED:
 - (1) Expiration date listed in existing plan has arrived or will soon arrive

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[step 10, continued]

- (2) Support order has been modified
- (3) CSED authority to enforce current support has changed
- (4) Licensee's ability to pay has changed.

Motions (subject to NOTE below): Declare existing payment plan expired; suspend license (or lift existing stay of suspension).

NOTE: Exceptions: Older Agreements; Best Interests of Support Enforcement. When item (2), (3), or (4) in step 10a above applies and the licensee will not agree to a new plan, the CSED may declare the existing payment plan expired only if the payment plan agreement itself specifically allows it. Some payment plan agreements entered before August 1996 do not include the necessary language (see Table 1). In these cases the existing payment plan is retained (no Motion and Order is entered), and the plan continues according to its terms. Of course, the CSED may in its discretion allow continuation of **any** existing payment plan, if the licensee refuses a new plan and collection under the existing plan would be in the best interests of support enforcement. ("Best interests" are presumed when the monthly payment amount in the new plan is lower than the amount in the existing plan.) **IMPORTANT:** If (2), (3), or (4) in step 10a applies and an existing plan is being retained that does not meet the income withholding requirements of the new situation, the CSED must--when and if a payor is identified--take the necessary steps in CS 510.1 through 510.20 to implement withholding for the required amount.

- b. **[DELINQUENCY]** Licensee fails to comply with terms of existing payment plan.

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

[step 10, continued]

Motion: Suspend license (or lift existing stay of suspension).

- c. [DELINQUENCY, DRIV/PROF/OCC] Licensee enters into payment plan after license is suspended.

Motion: Stay license suspension.

- d. [DRIV/PROF/OCC] At caseworker's discretion, emergency situation requires immediate stay pending further investigation or hearing.

Motion: Stay license suspension.

- e. Terms of stay ordered by hearing officer in section CS 530.2, or in step 17 of this section, no longer apply (licensee has failed to comply with terms, or circumstances supporting stay no longer exist).

Motion: Lift existing stay of suspension.

- f. [DRIV/PROF/OCC] Licensee pays debt in full or complies with subpoena while license is suspended.

[DRIV/PROF/OCC and RECREATIONAL] Licensee pays debt in full or complies with subpoena while suspension is stayed. (Note that in the case of recreational license eligibility a "stay" situation is possible only as the result of a hearing, where the decision and order suspended the eligibility but immediately stayed the suspension.)

Motion: Terminate license suspension.

- g. Licensee pays debt in full or complies with subpoena before license is ever suspended in case.

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

[step 10, continued]

Motion: Declare debt paid in full, or declare noncompliance cured.

- h. Case closure proceedings initiated while license is suspended or suspension is stayed.

Motion: [DRIV/PROF/OCC] Terminate license suspension. ([RECREATIONAL] No motion applicable--eligibility remains suspended for license year despite case closure.)

NOTE: Closing vs. Inactivating Incoming Interstate Cases. At the caseworker's discretion in an incoming interstate case, if the case becomes eligible for closure but is expected to reopen in the future, and the CSED can reasonably continue to track payments or compliance to verify the existence of a remaining debt or noncompliance, it may be beneficial to inactivate, rather than close, the case, to retain the license suspension status and authority.

- i. Case closure proceedings initiated while payment plan in effect, where license has never been suspended.

Motion: Terminate license suspension action. (Note that this requires adjustment of the form to show the **action** is being terminated, not the (nonexistent) suspension.)

- j. Other: At caseworker's discretion and with supervisor's approval, unusual facts of case indicate existing license suspension is not appropriate.

Motion: Stay license suspension; or, terminate license suspension.

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

NOTE: Use of "Other" Option to Stay or Terminate. When the "other" option is chosen under the motion to stay or the motion to terminate, completion of the motion requires a brief description of the circumstances. Examples of "other" situations may be (1) the other parent or custodian (if not the licensee) requests the CSED stay or terminate a suspension for good cause, (2) the caseworker discovers proper service of notice was not obtained and, for this reason, the default should be set aside (motion to terminate; also see NOTE below), and (3) the caseworker determines continued license suspension would be detrimental to income withholding (motion to stay).

NOTE: Actions Not Requiring Motion and Order. Use of the Motion and Order for License Suspension Action is not necessary when the status of the licensee's license in the case will not change as a result of the action. For example, when entry of a new payment plan has the effect of continuing an existing stay, the Motion and Order is not needed. Also, the MOLSA is not appropriate for setting aside a default in cases where a determination by a CSED Administrative Law Judge is required (see section CS 530.2, step 27 for procedures in this situation).

11. **[DELINQUENCY]** In cases where an existing payment plan (voluntary or imposed) is retained after a support order is modified or after CSED authority to enforce current support has changed, determines whether the existing plan provides for distribution according to the new monthly current support amount. If not, prepares and sends to licensee form CS-530.3A, Letter Adjusting Distribution. (Generally, as shown in Table 1, payment plans entered before August 1996 do not provide for changes in distribution.) Does not send any subsequent letters, but maintains copy of this

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

letter in file, documenting licensee has been informed of any future automatic changes in distribution.

Hearing
Officer

12. Upon receipt of Motion and Order for License Suspension Action, reviews motion(s) and signs decision and order if appropriate; reviews and signs any accompanying payment plan agreement as in step 13, and proceeds to step 18.

13. [DELINQUENCY] Upon receipt of payment plan proposed by CSED and signed by licensee, reviews agreement and, if appropriate, signs decision and order at end of agreement; proceeds to step 18.

14. [DRIV/PROF/OCC] If a motion for a stay of license suspension is received from the licensee after an order to suspend has been issued, reviews request to determine if licensee has alleged valid reason for stay concerning resultant or financial hardship. If not, issues order denying request, mails copies to licensee, licensee's attorney, and caseworker, and takes no further action. If so, grants hearing on motion, and proceeds to step 16.

[RECREATIONAL] If a motion for a stay of license suspension is received from the licensee after an order to suspend has been issued, denies request, explaining that stays are not available in cases of suspension of recreational license eligibility.

NOTE 1: New Matters Only. If the licensee's reason for requesting a stay has already been considered, for the same incident, or if the circumstances upon which the request is based existed at the time of the original hearing, the request must be denied.

NOTE 2: Suspension Not Stayed Before Hearing. Generally the CSED will not stay a suspension before a stay hearing. However, in extraordinary circumstances and upon a sufficient showing by the

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

licensee, the hearing officer may stay the suspension pending the outcome of the stay hearing.

NOTE 3: [DELINQUENCY] Hearing Declined in Favor of Payment Plan. Upon receipt and approval of a signed payment plan at any time before a requested stay hearing, the OALJ will inform the licensee the hearing is not needed, and will dismiss any hearing date already set.

- Caseworker 15. [DRIV/PROF/OCC] Upon being informed by OALJ of license suspension stay hearing (step 16), prepares, copies, and distributes exhibits and witness/exhibits list as in section CS 530.2, step 21. Prepares witnesses and testimony for hearing.

NOTE: Preparation for Stay Hearing. Unlike the usual CSED "notice" hearing where the burden is on the licensee to prove a mistake of fact, the license suspension stay hearing requires the CSED to rebut (or support) the licensee's case. Evidence presented by the CSED must relate to the licensee's claim of financial or resultant hardship, and the caseworker must prepare for the hearing accordingly. The OALJ will provide the caseworker with a copy of the hearing request, but if the request is not specific enough to allow for collection of appropriate evidence, the caseworker should contact the licensee and attempt to obtain as much information and documentation as possible about the specific grounds for the hardship. For example, the licensee may intend to claim a financial hardship based on the cost of supporting a parent in a nursing home, and these expenses may be unknown to the CSED. (If in the course of identifying the basis for the request for stay the caseworker discovers the reason is not a "new matter" as described in step 14, NOTE 1, the caseworker should move for dismissal of the hearing.) If the licensee will not provide the caseworker with a specific reason for the request for stay, the caseworker should consult with the

section:
Administrative License
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Changes in Suspension Status

CSED staff attorney on a motion for discovery or other necessary action.

Office of the
Administrative
Law Judge
(OALJ)

16. [DRIV/PROF/OCC] Prepares and issues Notice and Order for Stay Hearing, scheduling date and time for hearing. Copies notice and order, files original, and mails copies with attached hearing instructions to licensee, licensee's attorney, and caseworker.

Hearing
Officer

17. [DRIV/PROF/OCC] Conducts stay hearing. If licensee does not appear for stay hearing, considers licensee's defenses or objections to license suspension to be without merit. Issues hearing decision and order ruling on licensee's request. If stay is granted, includes in decision and order any imposed payment or compliance plan and any other special conditions for continuance of stay (continued participation in income withholding, for example).

OALJ

Completes Certificate of Mailing listing name and address of licensee and licensee's attorney. (Checks SEARCHS for any reason to protect address of licensee--if found, removes address before printing decision and order.) Elsewhere in document lists names of individuals to receive regular copies. Obtains signature of hearing officer on final decision and order. If necessary for use in step 19 obtains name and address of licensing authority from caseworker.

OALJ

18. Upon entry of CSED decision and order resulting from license suspension stay hearing, Motion and Order for License Suspension Action, or proposed payment plan, copies decision and order and any attachments, files original, and mails copies to individuals listed in Certificate of Mailing or shown as receiving regular copies. Coordinates processing in cases where both MOLSA and payment

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

plan decision and orders are entered.

NOTE: Ten-Day Challenge Period. If a non-hearing decision and order suspends the licensee's license or lifts a stay on the suspension, and is based on a finding the licensee has failed to comply with (or can no longer claim to be true) the terms of a payment plan or stay order, the CSED allows a period of 10 days during which the licensee may challenge the finding and, if applicable, request a hearing. The OALJ may (1) vacate the decision and order without a hearing, based on a showing by the licensee the terms were met, (2) allow the challenge and grant a hearing, or (3) disallow the challenge and deny the hearing. The hearing is conducted in the same way as a stay hearing (steps 14 through 17). If the licensee does not contest the suspension decision and order, it becomes final 10 days after entry, and the procedures in step 19 apply.

19. Determines status of licensee's license with licensing authority, and proceeds as in 19a or 19b below.

- a. [DRIV/PROF/OCC] If final decision and order (step 18) changes license status with licensing authority, prepares appropriate version of form CS-530.3G, Notice to Licensing Authority from (1) through (4) below, specifying CSED action:
- (1) Suspending license
 - (2) Staying license suspension
 - (3) Lifting stay of license suspension
 - (4) Terminating license suspension.

Obtains signature of hearing officer and mails certified copy of notice to licensing authority certified mail, return receipt requested. Files original.

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

[step 19, continued]

NOTE: Tracking Status of Licensee's License. The OALJ is responsible for tracking the status of the licensee's license with the licensing authority. There are two situations where a CSED decision and order may NOT affect the license status. In one, the decision and order may preserve the existing status of the license in the case--for example, when a new payment plan is approved superseding an existing payment plan, the license status under the existing payment plan (license not suspended, or license suspension stayed) is continued. In the other situation, a decision and order in one action may have no effect on the license status because a decision and order in another action involving the same licensee takes precedence, or has already produced the same effect. The following rule applies in multiple-action situations: If a licensee's license is suspended in ANY action, the license must remain suspended with the licensing authority until the suspension is stayed or terminated in ALL the actions against that licensee.

- b. **[RECREATIONAL]** If licensee's eligibility for recreational licenses is being suspended or stay is being lifted, enters event for suspended FWP eligibility, identifying licensee (by role in case) and applicable license year. (Note that "lifting a stay" applies only in cases where the license was suspended but the suspension was immediately stayed as part of the same hearing order.) For licensees who are not participants in case in which action is being brought, maintains manual list, obtains needed data from caseworker where possible, and adds to list submitted in step 22 at appropriate time.

section:
Administrative License
Suspension

subject:
Changes in Suspension Status

NOTE: Termination Based on Default Set-Aside.
In the rare event that suspension of the licensee's eligibility is being terminated (that is, eligibility is being reinstated) because the suspension was the result of a default that has now been set aside, it is the responsibility of the OALJ to arrange for the SEARCHS event described above to be deleted.

- Caseworker 20. If action in step 12 or 17 results in license suspension, enters appropriate SEARCHS case note and, at caseworker's discretion, adds message to CSU screen saying license is suspended and any call from licensee should be transferred to caseworker. Removes message when all suspensions in case are stayed or terminated, or when direct conversation with licensee no longer needed.
- [DRIV/PROF/OCC] If reminder letter not previously sent to this licensee in this case, sets tickler for 60 days to send reminder letter to licensee as in step 1a (this section).
21. If procedures in this section (530.3) result in suspension, payment plan, or hearing stay, monitors for events affecting status, and begins again in step 1a, 1b, or 1c if applicable.
- CSED Central Office 22. [RECREATIONAL] Prepares and submits list of ineligible licensees as in section CS 530.2.
- Department of Fish Wildlife and Parks 23. [RECREATIONAL] Matches CSED list with applications received, and takes action for individuals identified, as in section CS 530.2.
- Caseworker 24. [RECREATIONAL] On or about September 1 of year for which eligibility suspended, reviews case and initiates new suspension action if applicable, as in section CS 530.2.

Department of Revenue

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

Interstate Actions -
Income WithholdingCHILD SUPPORT ENFORCEMENT

POLICY:

As a part of the Child Support Enforcement Amendments of 1984, Congress required that income withholding be available and utilized regardless of the residence of the obligor. When employment for an obligor with a court or administratively ordered support obligation is located in another state, a referral for income withholding is to be made to that state. Income withholding hearings in interstate cases are held in the state where the obligor resides.

NOTE: For cases in which the obligor's residence and employment in another state are verified, but for whom no valid support order exists, refer to the Interstate information notebook for current requirements for handling an administrative or URESA referral to obtain a support order in that specific receiving state.

Outgoing interstate referrals for income withholding will be initiated in any office of the Montana CSEP, but incoming referrals are handled only by the Interstate Unit located in Helena.

OUTGOING REFERRALS

Income withholding procedures differ somewhat from state to state so a reference file is maintained in each office to determine exactly how to proceed for each state. If questions arise, the receiving state should be contacted before action is initiated.

PROCEDURES:

Responsibility
Caseworker/
Typist

ACTION

1. When it is determined that an obligor with a court or administratively ordered support obligation is employed in another state, a package is assembled for referral to that state including at a minimum the following:

- A complete Interstate Child Support Enforcement Transmittal; and

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

Interstate Actions -
Income Withholding

- A certified copy of the support order and all modifications; and
- A certified copy of any pay records maintained by the Clerk of Court or other collection agent through which the obligor is ordered to make payment; and
- A signed and notarized form CS-240, "Affidavit" from the custodial parent indicating any payments received directly from the obligor (should indicate "zero" if this is so); and

NOTE: Check each State's specific requirements.

2. Forwards the originals of all the above material to the appropriate state under cover of a completed "INTERSTATE CHILD SUPPORT ENFORCEMENT TRANSMITTAL", retaining a copy of each document for the case record, and diaries the case for 30 days.
3. Monitors the case for action taken by the responding state:
 - a. If no response is returned indicating receipt of the referral within 30 calendar days, sends a follow-up letter to the responding state, retaining a copy for the case record, and diaries the case for another 30 days.
 - b. If a copy of the TRANSMITTAL form is received from the responding state indicating receipt of the referral, places this in the case file and diaries the case for 60 days for receipt of a copy of the withholding order.

NOTE: The responding state may request additional information at any time during this process which should be supplied immediately so that income withholding can proceed.

4. Upon notification of completed action by the responding state:

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CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

Interstate Actions -
Income Withholding

- a. If the action was successful, places a copy of the withholding order in the case record and notifies the Support Payments Unit to set up an account by completing a ~~CSW-87~~ CS510.8B "Wage Withholding Account Set-up/Change Form" (see Section 510.8 for instructions).
 1. Send copy of order to NAFDC client/AFDC recipient.
 - b. If action was not successful because the obligor could not be found or was found not to be employed in the responding state, initiates relocation action.
 - c. If action was not successful for some other reason, consults with Regional Supervisor to determine an appropriate course of action.
5. Monitors payments in the case of a delinquency, contacts the responding state to determine the reason:
- a. If employment has terminated, initiates relocation and proceed accordingly.
 - b. If the action terminated for some other reason, consults with Regional Supervisor to determine an appropriate course of action.

INCOMING REFERRALS

The Interstate Unit of the CSEP will accept interstate requests for income withholding whenever the obligor is employed in Montana and the obligee resides outside the state. To be accepted, interstate referrals must include the following:

- A certified copy of the support order and all modifications; and
- A certified copy of any pay records maintained by a Clerk of Court or other collection agent through which the obligor is ordered to make payment; and
- A signed and notarized affidavit from the custodial parent indicating any payments received directly from the obligor (should indicate "zero" if this is so); and

SECTION:

CIVIL ENFORCEMENT
ADMINISTRATIVE

SUBJECT:

Interstate Actions -
Income Withholding

- A completed "INTERSTATE CHILD SUPPORT ENFORCEMENT TRANSMITTAL" with Section I, III, IV, V, VI, and VII of the form completed, and the "Initiate Wage Withholding" block checked in Section II; and
- Verifiable (by telephone or in writing) obligor employment in Montana.

NOTE: Interstate income withholding referrals received by the Regional Offices should be forwarded to the Interstate Unit in Helena.

PROCEDURES:

- | Responsibility | ACTION |
|-----------------------|--|
| Caseworker/
Typist | <ol style="list-style-type: none"> 1. When an interstate referral for income withholding is received, it is reviewed for completeness and: <ol style="list-style-type: none"> a. If it does not meet standards, return the entire referral to the initiating state with a letter explaining deficiencies. No further action is taken. b. If it does meet standards, remove page 3 of the "INTERSTATE CHILD SUPPORT ENFORCEMENT REFERRAL", complete it showing receipt of the documents, and return it to the initiating state. 2. See that a new case record is established. 3. Income withholding now proceeds according to Sections 510.1 through 510.9. All results should be reported to the Initiating state as they occur. The same time constraints apply to handling interstate as in-state cases. |

SEE FOLLOWING PAGES FOR EXAMPLE

INTERSTATE CHILD SUPPORT ENFORCEMENT TRANSMITTAL

RESPONDING AGENCY:
COMPLETE AND RETURN PAGE 3 TO ACKNOWLEDGE
RECEIPT OF THIS REQUEST. AFTER TAKING REQUESTED
ACTION, COMPLETE AND RETURN PAGE 4 (RESPONSE
FORM).

I. TO: RESPONDING IV-D AGENCY/OFFICE

FIPS CODE

CASE NAME (Last Name, First Name, Middle Initial)

FROM: INITIATING IV-D AGENCY/OFFICE

FIPS CODE

CASE NUMBER (Responding Agency)

CASE NUMBER (Initiating Agency)

COLLECTION LOCATION (Forward Payments to:)

FIPS CODE

CASE TYPE/STATUS

☐ IV-D NON-AFDC

☐ NON IV-D

☐ IV-D AFDC

☐ OTHER _____

II. ACTION REQUESTED (TO BE COMPLETED BY INITIATING AGENCY)

☐ ENFORCE EXISTING SUPPORT ORDER
ATTACHMENTS: Support Order And Any Modifications

☐ INITIATE STATE TAX INTERCEPT
ATTACHMENTS: Court or Administrative Order

☐ LOCATE ABSENT PARENT
ATTACHMENTS:
Aliases, Physical Description, Photograph,
Warrants, Background Information

☐ DOCUMENT INFORMATION (i.e., FEDERAL TAX OFFSET)

☐ INITIATE WAGE WITHHOLDING
ATTACHMENTS:
Support Order, Certification of Arrears

☐ VERIFY OR PROVIDE SOCIAL SECURITY NUMBER

☐ VERIFY AND PROVIDE COPY OF SUPPORT ORDER AND
ANY MODIFICATIONS

☐ CONDUCT ADMINISTRATIVE REVIEW FOR
FEDERAL TAX OFFSET (WITHIN 45 DAYS)
ATTACHMENTS:
Case Documentation/Summary, Support Order
and Modifications, Affidavit From Custodial
Parent, AP Correspondence

☐ VERIFY ARREARS AND PROVIDE COPY OF CALCULATIONS

☐ OTHER: _____

III. ABSENT PARENT INFORMATION

FULL NAME (First Name, Middle Initial, Last Name)

ADDRESS (Street, City, State, Zip)

EMPLOYER (Name)

EMPLOYER ADDRESS (Street, City, State, Zip)

DATE OF BIRTH

SOCIAL SECURITY NO.

SEX ☐ MALE
☐ FEMALE

HOME PHONE (Include Area Code)

WORK PHONE (Include Area Code)

IV. DEPENDENT CHILDREN INFORMATION

NAME(S)

SEX (M, F)

DATE OF BIRTH

V. CUSTODIAL PARENT INFORMATION

FULL NAME (First Name, Middle Initial, Last Name)

SOCIAL SECURITY NO.

HOME PHONE (Include Area Code)

ADDRESS (Street, City, State, Zip)

WORK PHONE (Include Area Code)

VI. CASE SUMMARY (BACKGROUND OF THIS MATTER)

DATE OF SUPPORT
ORDER

STATE & COUNTY ISSUING ORDER

COURT CASE NO.

DATE AND TYPE OF LAST COURT/ADMINISTRATIVE ACTION

SUPPORT AMOUNT/FREQUENCY

DATE OF LAST PAYMENT (Month, Day, Yr.)

CURRENT AMOUNT OF
ARREARS

PERIOD OF COMPUTATION

\$ _____ PER _____

\$ _____

FROM _____ TO _____

VII. CONTACT PERSON (Initiating Agency)

DATE

PHONE NUMBER (Include Area Code)

INTERSTATE CHILD SUPPORT ENFORCEMENT TRANSMITTAL

RESPONDING AGENCY:

COMPLETE AND RETURN PAGE 3 TO ACKNOWLEDGE
RECEIPT OF THIS REQUEST. AFTER TAKING REQUESTED
ACTION, COMPLETE AND RETURN PAGE 4 (RESPONSE
FORM).

I. FROM: RESPONDING IV-D AGENCY/OFFICE

FIPS CODE

CASE NAME (Last Name, First Name, Middle Initial)

TO: INITIATING IV-D AGENCY/OFFICE

FIPS CODE

CASE NUMBER (Responding Agency)

CASE NUMBER (Initiating Agency)

COLLECTION LOCATION (Forward Payments to:)

FIPS CODE

CASE TYPE/STATUS

☐ IV-D NON-AFDC☐ NON IV-D☐ IV-D AFDC☐ OTHER _____**II. ACTION REQUESTED (TO BE COMPLETED BY INITIATING AGENCY)**☐

ENFORCE EXISTING SUPPORT ORDER

ATTACHMENTS: Support Order And Any Modifications

☐

LOCATE ABSENT PARENT

ATTACHMENTS:

Aliases, Physical Description, Photograph,
Warrants, Background Information☐

INITIATE WAGE WITHHOLDING

ATTACHMENTS:

Support Order, Certification of Arrears

☐CONDUCT ADMINISTRATIVE REVIEW FOR
FEDERAL TAX OFFSET (WITHIN 45 DAYS)

ATTACHMENTS:

Case Documentation/Summary, Support Order
and Modifications, Affidavit From Custodial
Parent, AP Correspondence☐

INITIATE STATE TAX INTERCEPT

ATTACHMENTS: Court or Administrative Order

☐

DOCUMENT INFORMATION (i.e., FEDERAL TAX OFFSET)

☐

VERIFY OR PROVIDE SOCIAL SECURITY NUMBER

☐VERIFY AND PROVIDE COPY OF SUPPORT ORDER AND
ANY MODIFICATIONS☐

VERIFY ARREARS AND PROVIDE COPY OF CALCULATIONS

☐

OTHER: _____

III. TO BE COMPLETED BY RESPONDING AGENCY:☐REQUEST RECEIVED AND NO ADDITIONAL
INFORMATION NECESSARY TO PROCEED☐REQUESTED ACTION TAKEN, INFORMATION
PROVIDED BELOW (SEE REMARKS)☐

CONCUR WITH INFORMATION AS PROVIDED

☐DIFFERENCES OR CHANGES TO INFORMATION
PROVIDED (SEE REMARKS)☐ADDITIONAL INFORMATION NEEDED TO PROCEED
(SEE REMARKS)☐TAX OFFSET ADMINISTRATIVE REVIEW CONDUCTED
(SEE REMARKS)☐

OTHER: _____

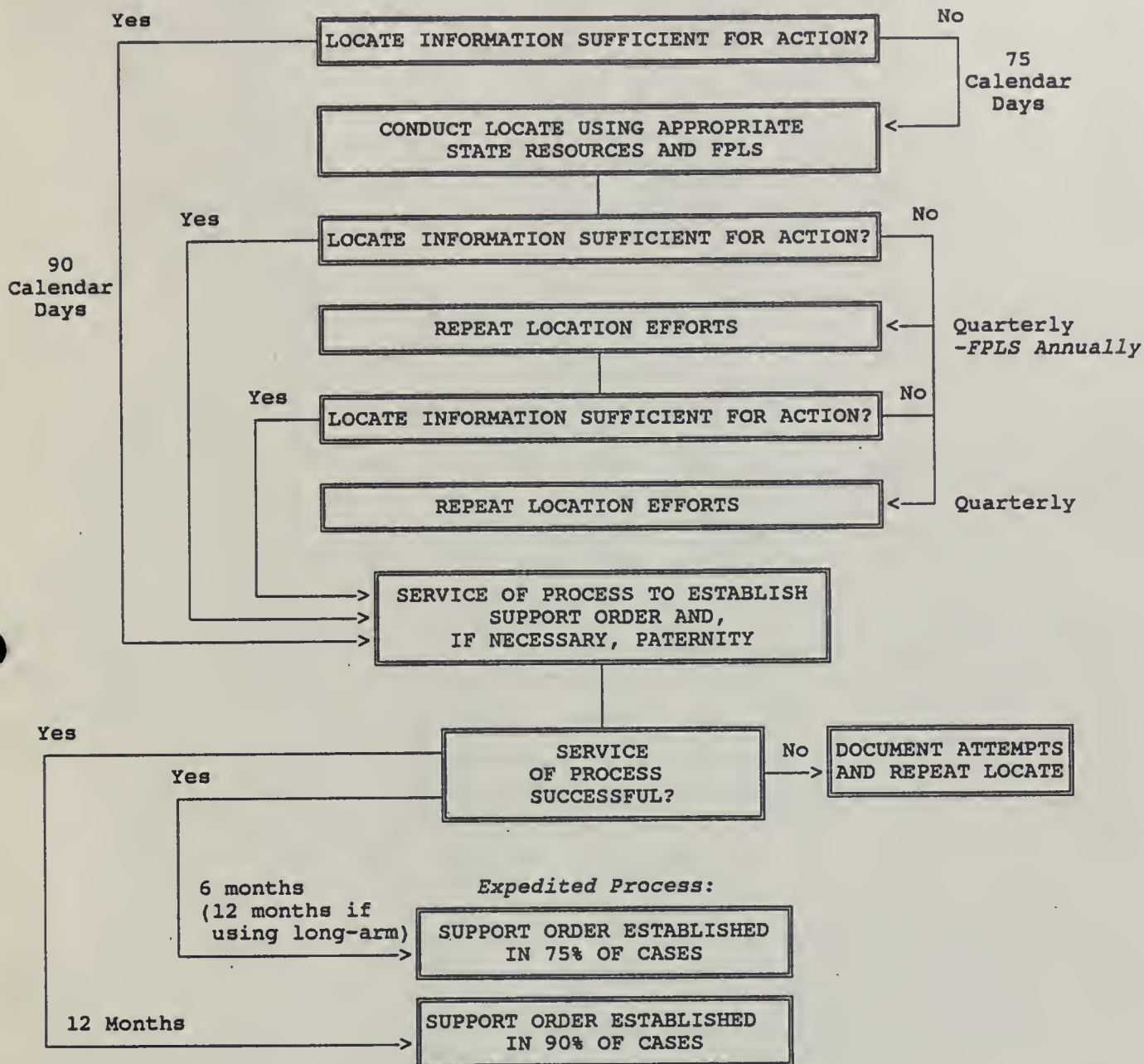
REMARKS

IV. CONTACT PERSON (Responding Agency)

DATE

PHONE NUMBER (Include Area Code)

SUPPORT ORDER ESTABLISHMENT AND, IF NECESSARY, PATERNITY ESTABLISHMENT

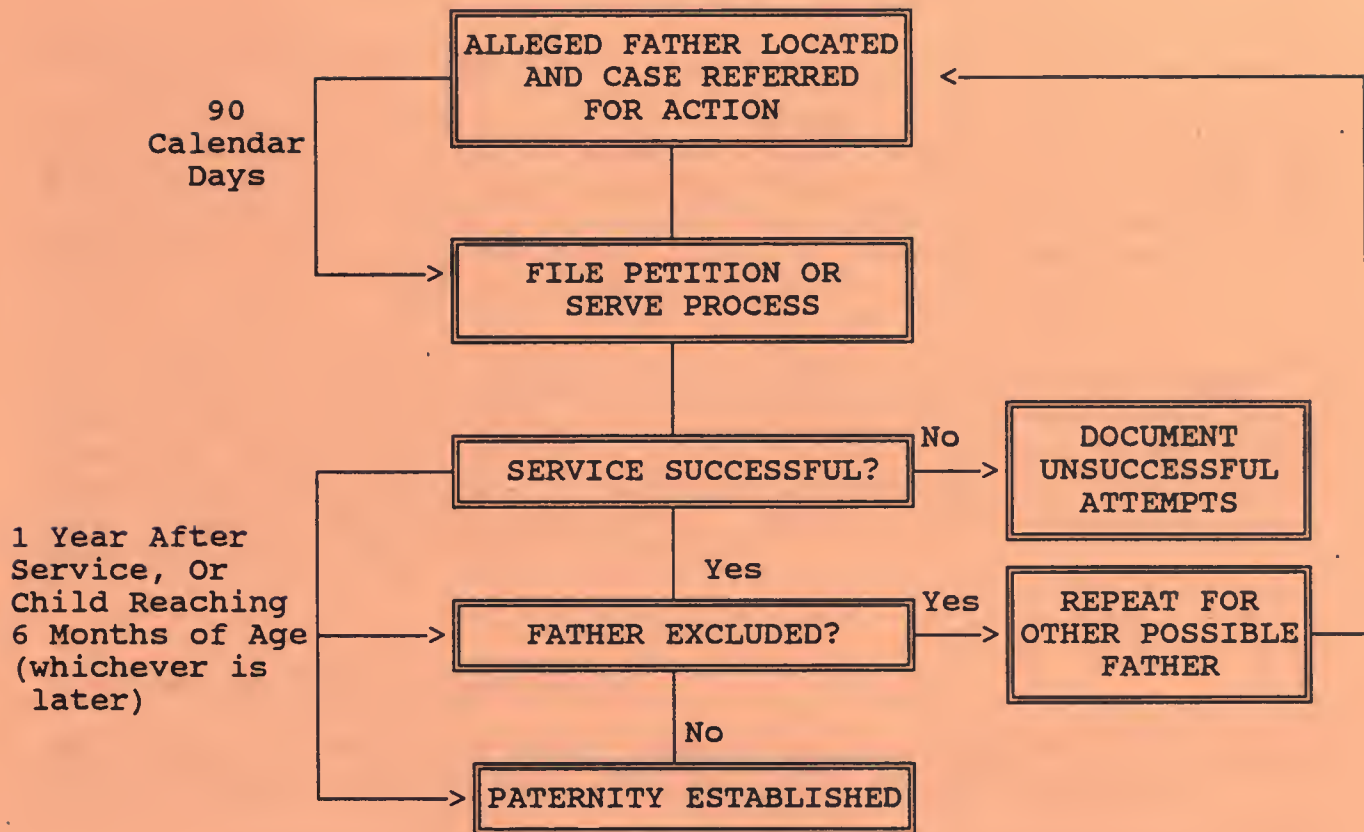


PATERNITY AND SUPPORT ORDER ESTABLISHMENT

- Service within 90 calendar days of locate to establish a support order and, if necessary, paternity. [CFR 303.4(d)]
- After obtaining service of process, regardless of whether paternity has been established, establish support order for following percentage of cases within each timeframe. [CFR 303.101(b)(i)(iii)]

75% in 6 months (or in 12 months if using long-arm)
90% in 12 months

PATERNITY ESTABLISHMENT



PATERNITY

- Service within 90 calendar days of locate.
[CFR 303.5(a)(1)]
- Conclude action within 1 year of service or child reaching 6 months of age, whichever is later.
[CFR 303.5(a)(2)(i)&(ii)]

March 22, 1993

PATERNITY FORMS BULLETIN

Paternity Forms on SEARCHS

Enclosed are copies of the 23 SEARCHS forms that relate to paternity establishment. Many of these forms are identical or similar to the manually generated forms used prior to SEARCHS implementation. (Minor changes were made to accommodate the information needed by Vital Statistics to ensure a match with their records, and to help save CSED costs in record searches.)

Some of the forms, however, are changed substantially or are completely new. The purpose of this Bulletin is to give users a chance to look over the new and revised forms before encountering them in automated casework. Each region will begin using the SEARCHS paternity forms, in place of the current paternity forms, upon SEARCHS implementation in that region, or upon distribution of this Bulletin, whichever is later.

Differences from Current Forms

The attached Paternity Forms Summary outlines the complete set of SEARCHS forms. Please note the following general changes:

- o More "dad" letters (variations for multiple-allegation and third-party or incoming interstate cases)
- o New procedures in multiple-allegation cases (sending the Declaration of Informed Consent to the alleged father with the Admission of Paternity, for signatures on both at once)
- o New forms:
 - Consent to Blood Test (in-state and interstate versions: interstate version mentions blood test costs, can be used by all regions; replaces Paternity Blood Test Agreement)
 - Motion and Order to Vacate/Dismiss Hearing
 - Affidavit and Motion for Blood Test Hearing
 - Request for Referral to District Court

Differences from Current Forms (continued)

- o Significant changes to forms:
 - Letter to Vital Statistics (adding request for copy of abstract or certificate of live birth; adding "no documents available" response)
 - Denial of Paternity (renamed "Statement Concerning Paternity"; allowing AF to deny paternity without requesting a hearing, if he is willing to take a blood test; also clarifying that hearing does not determine paternity)
 - Admission of Paternity (adding entry of judgment for costs of previous blood tests)

Coordination with SEARCHS Start-Up

Not all of the 23 forms will be on-line at the time of implementation. Users will be able to generate "Stage 1" forms as soon as SEARCHS is implemented in their region. "Stage 2" forms will be added to the system, as a group, at a later date. Regions should begin using all 23 SEARCHS forms, however, at the time of implementation. Stage 2 forms should be produced manually until they become available on the system.

Coordination with Office of the Administrative Law Judge

The Office of the Administrative Law Judge has changed its various paternity abstracts to accommodate the SEARCHS paternity forms. These changes were effective approximately February 16, 1993.

References to "Hearings Office"

Some of the enclosed forms still refer to the CSED "Hearings Office." Before automatic document generation begins these references will be changed to read, "Office of the Administrative Law Judge."

Department of Social and
Rehabilitation Services

Section:

UNESTABLISHED PATERNITY

Subject:

CHILD SUPPORT ENFORCEMENT

Overview

INTRODUCTION:

Until the legal relationship of father and child is established, a man who is said to be the child's father cannot be required to pay support. This relationship can be established by adoption, by presumption of law, by a District Court action and by the procedures referenced in this Section and the following Sections.

Adoptions

Although it creates a parental obligation, this manual is not concerned with the adoption process. It should be noted however, that until a final decree of adoption is entered, the adoptive father has no obligation to support the child. On the other hand, until a final decree of adoption is entered, the natural father's obligation towards the child does not terminate. If there are questions relating to parental responsibilities under circumstance of an adoption or contemplated adoption, consult with one of the CSED Staff Attorneys.

District Court Actions

Like adoptions, these manual sections are not concerned with paternity actions in the District Courts. Such actions, if the CSED must be involved, will be handled by the CSED legal unit or by a county attorney under a cooperative agreement. Accordingly, these manual sections are limited to setting out administrative procedures under which the caseworker can establish paternity.

Presumptions

Except as mentioned in the following paragraph, these manual sections are also not concerned with cases in which the law presumes a certain man to be a child's father. When a presumption of paternity is found to exist, all parental rights, duties and obligations attach automatically. For example, when a child is born during a marriage, the husband is presumed to be the father and no other action is necessary to establish the father and child relationship. A presumption, however, is not conclusive. A presumption can be rebutted at any time within applicable statutes of limitation.

UNESTABLISHED PATERNITY

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Technically, when a presumption is found to exist the question of paternity is not at issue. The caseworker can rely on this presumption and proceed to establish a support action or take whatever action is necessary to secure support for the child. However, in some cases, another man may be named on the NAFDC application or AFDC referral as the child's natural father. When this occurs the case becomes a contested paternity case to be processed under these manual procedures.

Alleged Father

As used in these manual pages, "alleged father" is at first defined as any man named by an AFDC recipient or NAFDC applicant as the father of a child for which paternity must be determined. Based on such allegation and assuming the man's identity and location are known, the CSED will commence proceedings according to the following manual Sections. The initial Section in this process requires the caseworker to determine if there is some substance or foundation for the allegation of paternity. The CSED does not want to unnecessarily cause a named man the embarrassment and expense of a paternity proceeding unless there is good reason to believe that the man could be the father. To avoid unfounded allegations the CSED caseworker is required to examine the available information including, if necessary, interviews of appropriate parties. If the caseworker cannot find sufficient facts to support the allegations then the man named on the application or referral will not be considered an "alleged father". Keep in mind however, that the receipt of subsequent new information may revive the allegation.

A brief description of each paternity establishment Section and the salient features of each such Section follows:

Section 601.1, "Presumed Paternity". To enable the caseworker to recognize those cases in which there is a man presumed at law to be the child's natural father, this Section sets out the general rules upon which such presumptions are founded.

Section 602.1, "Initiation of Paternity Cases (AFDC, NAFDC and Automatic Continued Cases Only" and 602.2, "Initiation of Paternity Cases (Third Party Custodian "Grandma" Cases Only)". These Sections essentially accomplish the same purpose,

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e.g., to describe the actions necessary to commence administrative procedures to establish paternity. Although they have similarities, because of differences, they have been separated into two Sections. Section 602.1 applies to AFDC cases, automatic continuing services cases, and NAFDC services cases. Section 602.2 is for "grandma" cases, that is, cases in which the child's custodian is not the child's natural parent.

Section 602.1 requires the child's mother to contact the man named by her as the father and request that he sign Admission of Paternity forms. If he does, it may be possible for the CSED to resolve the paternity matter without a contested case. In Section 602.1 the mothers are required to fill out and sign paternity affidavits. In most cases it will be the affidavits and, if necessary, the results of paternity interviews which will permit the caseworker to determine if there is sufficient reason to continue the case against the alleged father, i.e., can he still be deemed an "alleged father".

In the Section 602.2 "grandma" cases, the custodial relative or foster care provider is neither required to confront the alleged father nor required to complete the paternity affidavit. The reason is that the custodian is generally unable to give, under oath, first hand (non-hearsay) information concerning the alleged father or the particular's of the child's conception. In these cases it is necessary to interview the custodian to determine if there is some other form of reasonable cause to believe that the alleged father could possibly be the father.

Section 602.4, "Paternity Interview Guideline". This Section sets out general guidelines in outline form for the conduct of paternity interviews.

Section 602.5, "Admissions of Paternity". This Section set out certain verbal statements or acts relating to the alleged father which if found to exist could relate to a finding of "reasonable cause" to believe that the man could be the child's father.

Section 604.1, "Blood Test Stipulation Procedures". If or whenever an alleged father contacts the CSED and states that he may be the father of a child but

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is not sure, the caseworker should discuss the availability of paternity blood test with him. This Section provides two stipulation forms for the conduct of such testing. The first form requires prepayment of the costs of testing. The second form requires the alleged father to pay the costs if he is found to be the child's father. In both forms, the alleged father agrees to sign "Admission of Paternity" forms if the test results show a probability of 95 percent or greater.

Section 605.1, "Contested Case Procedures (Initial Case Screening)". This Section is a continuation of the screening process initiated in Section 602.1 and 602.2. Principally the caseworker is to insure before proceeding with service of process that the case against the alleged father is not unfounded. Screening also includes a determination of whether the CSED has jurisdiction over the alleged father.

Section 605.2, "Contested Case Procedures (Single Allegation Cases)". This Section sets out procedures for serving an administrative notice on the alleged father. As a result of the notice the alleged father must either deny or admit paternity. If he admits paternity the CSED may enter a consent order as provided by Section 606.2. If he denies paternity, the alleged father is given a hearing. The purpose of the hearing is to determine whether there is sufficient evidence for the Hearing Officer to conclude that there is reasonable cause to believe that the alleged father could be the natural father. If such conclusion can be made the alleged father is ordered to submit to paternity blood testing. Should the test results show a probability of 95% or greater, the alleged father is presumed as a matter of law to be the father and the CSED can proceed to establish a support order. If the alleged father fails to respond to the notice or fails to appear at the hearing or for the blood draw, the law presumes that such failure is an admission that the allegation is true. Consequently the CSED may enter a default paternity order under Section 606.1. The procedures in this Section are limited to cases in which there is but a single allegation of paternity. Section 605.3 provides procedures when there is more than one alleged father or there is a presumed father and one or more alleged fathers.

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Section 605.3, "Contested Case Procedures (Multiple Allegation Cases)". This Section describes procedures to use in multiple allegation situations. In these cases, a default paternity order may not be entered unless the other alleged or presumed fathers have been excluded by blood test results. Likewise, after service of notice and even though one of the alleged fathers may admit paternity, a consent paternity order may not be entered in multiple allegation cases except as provided in Section 606.2.

Section 606.1, "Paternity Default Orders". Except in multiple allegation cases, whenever an alleged father fails to respond to an administrative paternity notice or fails to appear for hearing or a blood draw the CSED may enter a default paternity order. This Section provides the procedure used in applying for and rendering such an order. In multiple allegation cases, a default order may not be entered unless all other alleged fathers have been excluded by paternity blood test results. If necessary, in order to compel blood tests for one or more of the other alleged fathers who are also in default of the notice, the CSED Staff Attorney can apply to a District Court for an order requiring the alleged father or fathers to comply with the CSED order to submit to blood testing.

Section 606.2, "Paternity Consent Orders". In various steps set out in previous Sections, the alleged father has the opportunity to voluntarily resolve the paternity issue by executing an Admission of Paternity form. This Section sets out procedures for entry of a consent paternity order based on the signed admission form. However, in multiple allegation cases a consent paternity order may not be rendered unless there is "informed consent". If the alleged father knows of other possible fathers and in spite of such knowledge he desires to be named as the child's father, the consent order may be rendered. On the other hand, if the father is mislead into thinking that only he could be the child's father then there is no "informed consent" and any consent order signed under these circumstances would be invalid. This Section also provides procedures for ascertaining "informed consent".

Section 608.1, "Blood Testing Agreement". This Section sets out the blood testing agreement with

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the blood testing lab used by CSED and the procedures for setting up blood test draws.

Section 608.2, "Contract Blood Drawing Sites".
This Section sets out blood test draw sites and the account numbers by CSED Regional Office to which blood draw costs should be charged.

Section 608.3, "Contract Blood Testing Costs".
This Section sets out the blood testing costs per agreement with the blood testing lab used by CSED.

Section 608.4, "Blood Testing Laboratories".
Federal regulations require the CSED to have available a list of various laboratories which provide paternity blood testing. This list is to be made generally available to courts, attorneys and the public upon request. This Section sets out the required list of laboratories.

August 1, 1995

Paternity Default Bulletin

The following documents must be included in the package sent to the Office of the Administrative Law Judge for a Paternity Default Order. Refer to section CS 606.1 for specific and more detailed information.

PATERNITY DEFAULT ORDER

CS-606.1A, "Application for Paternity Default Order"

(select amended or substitute birth certificate option if applicable)

CS-606.1B, "Paternity Default Order"

(select amended or substitute birth certificate option if applicable)

SEARCHS Stuffers

Certified Birth Certificate, if child born in Montana (parent's information copy is not acceptable)

CS-605.2A, "Notice of Parental Responsibility"

Instructions for Manual Maintenance

Place this Bulletin at the beginning of section CS 606.1, Paternity Default Orders (September, 1990).

Department of Social and
Rehabilitation Services

Section:**UNESTABLISHED PATERNITY****Subject:**

Presumed Paternity

CHILD SUPPORT ENFORCEMENT**INTRODUCTION:**

When a man's paternity is presumed under the provisions of MCA Section 40-6-105 or 40-5-234(3), the question of paternity is not an issue. Therefore, when such a presumption is found to exist, the case will not be classified as a paternity case. Refer to the case management Section 201.1 et. seq.

A man's paternity is presumed whenever one or more of the following occur:

1. The man and the child's mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, decree of separation or divorce.
2. Before the child's birth, the man and the child's mother have attempted to marry each other in apparent compliance with the law, however, the marriage is or could be declared invalid, and:
 - a. if the attempted marriage can be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after termination by court declaration or decree; or,
 - b. if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.
3. After the child's birth, the man and the child's mother marry each other and:
 - a. the man consents to have his name placed on the birth certificate as the child's father; or,
 - b. the man voluntarily promises in writing to support the child; or,

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Presumed Paternity

- c. the man is ordered by a District Court to support the child
4. When, for a child born in Montana, the man acknowledges his paternity in writing which is filed with the Bureau of Vital Records and Statistics and the child's mother does not dispute the acknowledgement. However, if another man is presumed to be the child's father, the acknowledgement will not be effective unless the other presumed man gives his written consent or the other man's presumption has been extinguished by the District Court.
5. The results of a genetic blood test show a 95 percent or greater probability that the man may be the child's natural father.

If in doubt as to the existence of a paternity presumption, consult with your regional supervisor and staff attorney.

NOTE 1: Presumptions of paternity are not the same in all states. For example, in many states the presumption applies only to children born during a marriage. The presumption in those states regarding acknowledgments of paternity is not applicable.

NOTE 2: When paternity is presumed, even though paternity has never been formally adjudicated by a District Court, the child is vested with all the legal rights and privileges that a child born within an intact marriage has. Among these are rights to inheritance, rights to the father's medical and life insurance benefits, and to social security and possibly veterans benefits. The child is also entitled to the right to be supported by the father. Consequently, when paternity is presumed, the CSED may proceed with any appropriate method to establish and enforce a support obligation.

NOTE 3: Presumed paternities should be verified (e.g. acquire copies of divorce decree, acknowledgement of paternity forms and/or other verification) before the CSED acts upon the presumption to establish a support order. Do not solely rely on the recipient's or applicant's claim that paternity has been established or is presumed. Require the recipient or applicant to obtain any

UNESTABLISHED PATERNITY

Presumed Paternity

necessary documents as part of the case intake process.

NOTE 4: Under MCA Section 50-15-105 (4), the fact that a man is named on a birth certificate as distinguished from an acknowledgement of paternity, cannot be used as evidence of the man's paternity unless the man and the child's mother were married to each other.



**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

TO: _____ _____ _____ _____	DATE: _____ FROM: _____ _____ _____ _____
CASE NO. _____	MOTHER: _____ CHILD: _____

The Child Support Enforcement Division (CSED) is responsible for determining the paternity of the above named child. You have agreed to participate in paternity blood testing to determine whether or not you can be excluded as the biological father of this child. Your blood drawing is scheduled for _____ on _____ at _____.

When you report to the hospital lab or blood bank, you must have photo identification and your social security card. Your photograph and fingerprints will be taken and become a part of the permanent record.

If you are unable to have your blood drawn at the scheduled time, please contact me immediately to make other arrangements.

Thank you for your cooperation.

CHILD SUPPORT ENFORCEMENT DIVISION

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

TO: _____ **DATE:** _____

FROM: _____

CASE NO. _____ **ALLEGED FATHER:** _____

The Child Support Enforcement Division (CSED) is responsible for establishing the legal paternity of your child(ren). The man you named as father has agreed to undergo genetic blood testing.

The CSED has scheduled you and your child(ren) for blood drawings at _____ on _____ at _____. You and the child(ren) must have your blood drawn at the same time.

When you register with the hospital lab or blood bank, you must have photo identification for you and some form of identification for your child(ren). Examples of possible identification for the child(ren) are a social security card, a Medicaid card, baptismal records, or birth records and hospital identification bracelet or crib card from birth. Photographs and fingerprints will be taken of you and the child(ren) and become a part of the permanent record.

If you or the child(ren) are unable to have your blood drawn at the scheduled time, please contact me immediately. Failure to appear could result in the closure of your Non-AFDC case or a recommendation to the welfare office that your AFDC benefits be terminated.

Child Support Enforcement Division

November 20, 1995

Paternity Hearings Bulletin

Paternity Hearings Responsibility

The new paternity establishment Manual pages dated September 30, 1995, place the responsibility for scheduling, conducting, and issuing orders following paternity hearings with the CSED Office of the Administrative Law Judge (OALJ). At this time, however, the OALJ has not yet taken over the paternity hearings function, and the hearings are still being conducted by the Agency Legal Services Bureau (ALS) of the Department of Justice.

The responsibility for the CSED paternity process continues to be divided as follows:

OALJ....

- Maintains Paternity Registry
- Issues Order of Nonpaternity
- Issues Decision and Order attached to Consent to Blood Test, and any Blood Test Subpoenas needed to compel mother's and children's appearance following AF's consent
- Conducts hearing on identity of person tested, and issues order for retesting if necessary
- Issues Paternity Default Order (except when AF defaults on ALS hearing)
- Issues Paternity Consent Order
- Receives request for paternity hearing from AF; holds for 10 days pending caseworker contact with AF re: consent to testing; forwards to ALS for action
- Receives Affidavit and Motion for Blood Test Hearing from caseworker; processes hearing request, conducts hearing, and issues order following hearing as described below (for ALS hearing requested by AF)
- Issues Blood Test Subpoena following hearing requested by CSED
- For notices served together, coordinates NFR process with NPR hearing (OALJ or ALS hearing)
- Prepares administrative record for referral to district court (OALJ or ALS hearing)

ALS....

- Receives AF request for paternity hearing through OALJ; schedules and conducts prehearing conference; sets discovery, exhibit, and hearing dates; issues hearing notices; sends exhibits to parties; issues subpoenas as required to compel appearance or obtain evidence for hearing

(over)

- Conducts hearing requested by AF; issues order advising parties of results of hearing (including Paternity Default Order if AF does not appear for hearing)
- Issues Blood Test Subpoena following hearing requested by AF

Change in Responsibilities Pending

The OALJ is preparing to take over the paternity hearing functions now performed by ALS as soon as possible. OALJ staff is in the process of developing the internal forms and procedures, and the notice of facts concerning conception and gestation, required for implementation. Paternity hearings are now a top priority among OALJ projects.

You will be advised when the OALJ is ready to begin performing all paternity hearings (those requested by the alleged father as well as those requested by the CSED). Until then, please continue to work with ALS for hearings requested by the alleged father, according to the breakdown in this Bulletin.

Instructions for Manual Maintenance

Place this Bulletin directly in front of section CS 601.2; make the following entry in the Table of Contents (page 7):

Paternity Hearings Bulletin (11/20/95)

pp 1-2

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Voluntary Paternity
Acknowledgment and Records

SUPERSEDES: CS 601.2, Voluntary Paternity Acknowledgment and Records, September 30, 1995, and July 14, 1996.

REFERENCES: Sections 40-6-105 and 50-15-210 MCA; 45 CFR sections 302.70(a)(5) and 303.5(g)

POLICY: The purpose of this section is to document certain aspects of the system of voluntary paternity acknowledgment and records currently in place in Montana. Specifically, this section describes

- the procedures for creating and filing voluntary paternity records in Montana,
- the overall role of the CSED within the state voluntary paternity acknowledgment process, and
- the specific procedures by which Montana complies with federal child support enforcement requirements for voluntary paternity establishment.

Caseworkers and administrative staff should refer to information in this section in taking required CSED actions and in locating or evaluating voluntary paternity records. Procedures are given for two separate processes:

- I. HOSPITAL PATERNITY ACKNOWLEDGMENT
- II. DIRECT-FILE PATERNITY ACKNOWLEDGMENT AND WITHDRAWAL OF ACKNOWLEDGMENT.

The first process involves direct CSED actions; the second requires only indirect support by the CSED. It is important for the caseworker to understand both of these processes, however, in managing voluntary paternity cases and issues most efficiently.

PROCEDURES:

The following procedures include some actions taken by non-CSED agencies. These "actions" represent only the CSED's general understanding of the agencies' operations and are not intended to prescribe specific steps or policies for those agencies.

section:
ESTABLISHING PATERNITY

subject: Voluntary Paternity
Acknowledgment and Records

I. HOSPITAL PATERNITY ACKNOWLEDGMENT

RESPONSIBILITY	ACTION
CSED Central Office	1. Provides hospital paternity acknowledgment material to Montana Vital Statistics Bureau (VSB); updates or resupplies material as needed. Material includes written instructions for hospital staff, letter of explanation to parents, Paternity Acknowledgment forms, Notice of Withdrawal of Paternity Acknowledgment forms, and booklet describing parents' rights and responsibilities in acknowledging paternity. Also, sets dollar amount for reimbursing hospitals for reasonable costs of administering acknowledgments.
Vital Statistics Bureau (VSB)	2. Supplies all Montana hospitals with paternity acknowledgment material described in step 1.
CSED Liaison	3. Trains hospital staffs in procedures for obtaining and processing acknowledgments, and for receiving reimbursement from CSED; provides refresher training as needed. Provides material or training to other persons or facilities upon request (may include midwives, pre-natal clinics). At any time answers questions from hospital staff or other persons involved in supporting hospital paternity program.
Hospital Staff	4. Upon birth of child to unmarried mother, provides paternity acknowledgment material to both parents (or to mother if father not present), and explains opportunity to voluntarily acknowledge paternity. If either parent requests information not contained in written material, refers parents as follows: - For questions about properly completing acknowledgment form, refers parents to Vital Statistics Bureau or CSED. - For questions about paternity establishment, refers parents to CSED.

section:
ESTABLISHING PATERNITY

subject: Voluntary Paternity
Acknowledgment and Records

CSED (Customer
Service Unit
or Regional
Staff)

5. Receives and answers questions from parents about obligations and benefits of paternity establishment.

Hospital Staff 6. Allows time for parents to read and consider acknowledgment information, then proceeds as follows, coordinating with actions in step 7:

- a. If parents willing to sign Paternity Acknowledgment at any time during mother's hospital stay, assists in completion of form if necessary and notarizes signatures on acknowledgment.
- b. If parents not willing to sign acknowledgment during mother's hospital stay, advises parents they may still acknowledge paternity by sending the completed, notarized acknowledgment directly to VSB at the address on the form. (Proceeds in step 7 for birth certificate only.)
7. Enters birth information on state system, and creates Certificate of Live Birth (birth certificate) for electronic access by VSB. Obtains mother's signature on paper copy, attaches signed Paternity Acknowledgment, and sends to local registrar (usually Clerk and Recorder) for county where hospital located.

NOTE: At the time of this writing, only a few hospitals were creating birth certificates "on line;" most were still preparing paper documents only. Additionally, hospitals not yet on line were required to send a copy of the Paternity Acknowledgment to the CSED with an invoice for reimbursement of costs. Full participation in the on-line creation of birth certificates is expected sometime in 1998.

section:
ESTABLISHING PATERNITY

subject: Voluntary Paternity
Acknowledgment and Records

- Local Registrar 8. Receives signed (paper) birth certificate and Paternity Acknowledgment from hospital. Reviews for conformance to state requirements; signs and dates birth certificate, and sends to county Clerk and Recorder. Sends original Paternity Acknowledgment to VSB. (For birth certificates received from hospitals not yet on line, sends original registered birth certificate to VSB with copy to Clerk and Recorder.)
- VSB 9. Receives, registers, and assigns number to electronic birth certificate. Receives original Paternity Acknowledgment and files with birth certificate. (For birth certificates prepared by hospitals not yet on line, receives registered (paper) birth certificate from local registrar.)
- CSED Administrative Support Unit 10. Regularly accesses electronic birth certificate system, and generates report listing Paternity Acknowledgments obtained and submitted by hospitals during preceding time period; arranges for payments to hospitals. (For Paternity Acknowledgments obtained by hospitals not yet on line, pays hospital upon receipt of invoice and copy of acknowledgment.)
- CSED Central Office 11. Quarterly produces and submits federal Report of In-Hospital Paternity Acknowledgements, listing number of reporting hospitals, number of acknowledgments received from each hospital, and number of unwed births.
- CSED Liaison 12. Evaluates each hospital's program; contacts appropriate hospital staff and discusses possible problems; resolves any procedural issues; provides refresher training for hospital staff if needed.

COPIES OF THE "PATERNITY ACKNOWLEDGMENT" AND "NOTICE OF WITHDRAWAL OF PATERNITY ACKNOWLEDGMENT" ARE PROVIDED AT THE END OF THESE PROCEDURES.

section:
ESTABLISHING PATERNITY

subject: Voluntary Paternity
Acknowledgment and Records

II. DIRECT-FILE PATERNITY ACKNOWLEDGMENT AND WITHDRAWAL OF ACKNOWLEDGMENT

RESPONSIBILITY

ACTION

CSED Central
Office

1. Provides following material to Montana Vital Statistics Bureau (VSB) and, upon request or recognized need, to any other public agency having regular contact with unmarried parents:
 - (1) Letter of explanation to parents
 - (2) Paternity Acknowledgment forms
 - (3) Notice of Withdrawal of Paternity Acknowledgment forms
 - (4) Paternity Information for Parents--booklet describing parents' rights and responsibilities in acknowledging paternity.
 Arranges with VSB and other agency staffs for distribution of material to parents in step 2.

NOTE: Other Agencies. Some examples of agencies having contact with unmarried parents are social programs concerned with maternal and child health; judicial agencies such as the district courts; and not-for-profit legal assistance or parents' rights groups.

VSB or
Appropriate
Public Agency 2.

- Upon direct request of either parent for assistance with voluntary paternity acknowledgment, provides booklet and forms described in step 1.

NOTE: Acceptable Filing Routes. Paternity Acknowledgments not submitted through the hospital at the time of birth (see part I, this section) may be submitted by the parents directly to VSB. Any Notice of Withdrawal must be submitted directly to VSB within 60 days after the date the associated Paternity Acknowledgment was signed.

section:
ESTABLISHING PATERNITY

subject: Voluntary Paternity
Acknowledgment and Records

CSED (Customer
Service Unit
or Regional
Staff)

3. Receives and answers any questions from parents about obligations and benefits of paternity establishment.

VS

4. Upon receipt of acknowledgment or timely withdrawal containing necessary notarized signatures, makes appropriate entries to, and files documents with, existing birth records. For acknowledgment that cannot be filed with existing birth records (child not born in Montana, or other reason), files in separate paternity acknowledgment registry.



MONTANA DEPARTMENT OF
PUBLIC HEALTH & HUMAN SERVICES
VITAL RECORDS & STATISTICS BUREAU
PO BOX 200901
HELENA, MT 59620-0901

**PATERNITY
ACKNOWLEDGMENT**

PLEASE PRINT HARD USING A BALL POINT PEN

CHILD'S NAME: FIRST, MIDDLE, LAST	DATE OF BIRTH	SOCIAL SECURITY NUMBER
CITY OF BIRTH	HOSPITAL	
MOTHER'S NAME: FIRST MIDDLE LAST (MAIDEN SURNAME)		MOTHER'S DATE OF BIRTH
MOTHER'S STATE OF BIRTH (If Not U.S.A. Give Country)	MOTHER'S RACE	MOTHER'S SOCIAL SECURITY NUMBER
FATHER'S NAME	FATHER'S RACE	FATHER'S DATE OF BIRTH
FATHER'S ANCESTRY	Education (Elementary/ Secondary) (0-12) College (1-4 or 5+)	FATHER'S SOCIAL SECURITY NUMBER
FATHER'S STATE OF BIRTH (If Not U.S.A. Give Country)	FATHER'S OCCUPATION	FATHER'S PLACE OF EMPLOYMENT

BOTH PARENTS MUST SIGN BEFORE A NOTARY PUBLIC

We the natural mother and father, declare under penalty of perjury under the laws of the State of Montana that the following statements are true and correct. When completed and filed with the state registrar this Voluntary Declaration of Paternity establishes a father-child relationship identical to the relationship established when a child is born to married parents. **NOTICE TO BOTH PARENTS: THIS IS A LEGALLY BINDING DOCUMENT.** Upon signing this declaration, it becomes your duty under law to provide support and care for the child as the parent. **Do not sign** this declaration if you do not understand the legal effect of the document or you have doubts about the paternity of the child. **You have 60 days to withdraw this Acknowledgment of Paternity if either parent decides that the man who signed the Paternity Acknowledgment is not the true father.**

PLEASE PRINT/SIGN HARD USING A BALL POINT PEN

I certify that I am the natural mother. The above information is true and the man named above is the only possible father. I make this affidavit to name the natural father on my child's birth certificate. I understand the rights, responsibilities, alternatives, and consequences of signing this affidavit Mother's Signature _____ Address _____ City, State, ZIP _____ State of _____ County of _____ On this _____ day of _____, 19____ _____ personally appeared before me and whose identity I proved on the basis of satisfactory evidence to be the signer of the above instrument, and she acknowledged that she executed it. Notary Public _____ Residing at _____ (Seal) My commission expires _____	I certify that the above information is true. I make this affidavit to show that I am the natural father on my child's birth certificate. I also understand that by acknowledging paternity of this child, I accept an obligation to provide child support under the laws of the State of Montana. I understand the rights, responsibilities, alternatives, and consequences of signing this affidavit. Father's Signature _____ Address _____ City, State, ZIP _____ Phone number _____ State of _____ County of _____ On this _____ day of _____, 19____ _____ personally appeared before me and whose identity I proved on the basis of satisfactory evidence to be the signer of the above instrument, and he acknowledged that he executed it. Notary Public _____ Residing at _____ (Seal) My commission expires _____
---	--

NOTICE OF WITHDRAWAL
OF PATERNITY ACKNOWLEDGMENT

State of _____)
: ss.
County of _____)

I, _____, signed an acknowledgment of paternity for
(Your name)

_____ on _____. A copy of this notice of
(Child's name) (Date)

withdrawal was provided to me with the paternity acknowledgment form. Having re-considered my action signing the acknowledgment, I hereby withdraw, cancel and rescind my acknowledgment.

I understand that this withdrawal is useless and of no effect unless it is filed with the Montana Department of Public Health and Human Services within 60 days of the date of the paternity acknowledgment was signed. I understand that to file this document, I must present it in person to the department at the address below, or mail it to the department at the mailing address below so that it is received and available for filing with the department's vital records before the 60 day period ends.

DATED this _____ day of _____, 19 _____.

SUBSCRIBED AND SWORN TO before me, a Notary Public for the State of Montana, on the date written above.

(SEAL)

Notary Public
Residing at: _____
My Commission Expires: _____

INSTRUCTIONS FOR FILING THIS WITHDRAWAL NOTICE

You may file this document:

IN PERSON:

DPHHS
Vital Records and Statistics Bureau
111 Sanders St., Room 205
Helena, MT

OR

BY MAIL:

DPHHS
Vital Records and Statistics Bureau
P.O. Box 20091
Helena, MT 59620-0901

January 11, 1998

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August 1, 1995

Paternity Consent Bulletin

The following documents must be included in the package sent to the Office of the Administrative Law Judge for a Paternity Consent Order. Refer to section CS 606.2 for specific and more detailed information.

PATERNITY CONSENT ORDER

CS-606.2A, "Admission of Paternity"

CS-606.2C, "Declaration of Informed Consent" (if more than one alleged father)

CS-606.2E, "Application for Paternity Consent Order"

(select amended or substitute birth certificate option if applicable)

CS-606.2D, "Paternity Consent Order"

(select amended or substitute birth certificate option if applicable)

Certified Birth Certificate, must be attached if child was born in Montana (parent's information copy is not accepted) for all amended or substitute orders.

SEARCHS Stuffers

Reminders:

Enter the total cost for the blood tests in the Decision and Order section of the CS-606.2D, "Paternity Consent Order".

Do not request an amended order when the father's name is already on the birth certificate or when the child is born out of state.

Instructions for Manual Maintenance

Place this bulletin at the beginning of Section 606.2, "Paternity Consent Order (September, 1990).

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Notification of
Paternity Claim

SUPERSEDES: [new section]

REFERENCES: MCA § 40-5-232(6)

POLICY: In 1997, the Legislature modified MCA § 40-5-232 to require the CSED to notify alleged fathers of a paternity claim made against them. This notification must occur "promptly," and must be made without regard to whether or not there is sufficient evidence to commence a paternity action. Notification should be made once the alleged father is located.

The statute limits this requirement only to situations where the claimant/custodian is the child's mother. Thus, this notice is not issued when a third party custodian opens a case.

Additionally, the CSED is required to provide notice "in a manner that places the demands of individual privacy above the merits of public disclosure." For that reason, notices addressed to an alleged father should be mailed in an envelope marked "Personal and Confidential."

PROCEDURE:

Responsibility	Action
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- | | |
|------------|--|
| Caseworker | <ol style="list-style-type: none"> 1. As a part of the case opening procedures, a "Notification of Paternity Claim Letter," form CS-601.3A, must be sent promptly to any located man named on a referral or application as a possible father of a child. If the named man is not located, notification must occur as soon as he is located. 2. At any time after case opening a located man is identified by the child's mother as a possible father, the notification must be promptly sent. Again, if the named man is not located, notification must occur as soon as he is located. |
|------------|--|

section: ESTABLISHING PATERNITY**subject:** Notification of
Paternity Claim

3. If a man who received a "Notification of Paternity Claim Letter" is later determined not to be a possible father by reason of another man's blood test, or if the case is closed without resolution of the paternity claim, a "Paternity Claim Follow-Up Letter," form CS-601.3B, should be mailed to each alleged father whose only contact with the CSED was the "Notification of Paternity Claim Letter." This letter must also be sent in an envelope marked "Personal and Confidential."

Department of Revenue

SECTION:

AFDC DISTRIBUTION

SUBJECT:

Bradford Report No. 64-574

CHILD SUPPORT ENFORCEMENT

REPORT 64-574: DISTRIBUTION OF CHILD SUPPORT PAYMENTS--Each AFDC account in which a collection was made is reported in three formats; Detail (individual accounts) by County, Total by County, and Grand Totals Statewide.

ITEM

EXPLANATIONS:

- (A) Report Number
- (B) Month of Collections
- (C) County Code and Name
- (D) Recipient Last Name
- (E) Recipient Social Security Number
- (1) Current month's support obligation
- (2) Amount collected applied to current
- (3) Amount collected applied to arrearage
- (4) Total amount collected
- (5) Amount to be distributed to State
- (6) Amount to be distributed to County
- (7) Amount of county incentive
- (8) Amount of incentive to another county (an asterisk (*) and the county or FIPS Code is printed)
- (9) Amount to be distributed to Federal Government before deducting incentives.
- (10) Amount to be distributed to Federal Government after deducting incentives

June 15, 1981

RPT 64-574

MONTANA CHILD SUPPORT ACCOUNTING SYSTEM

PAGE 39

DISTRIBUTION OF CHILD SUPPORT PAYMENTS AS OF MARCH 31, 1981

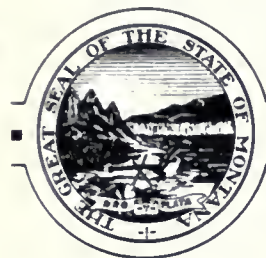
412 DEER LODGE COUNTY

(C)		(D)	(E)	(1)	(2)	(3)	(4)	(5)	(6)	(7/8)	(9)	(10)
RECIPIENT LAST NAME	RECIPIENT SD SEC NO	AMOUNT OF ORDER	CURRENT MONTH PAID	CURRENT PAID ON ARREARAGE	TOTAL AMOUNT PAID	STATE SHARE	COUNTY SHARE	COLLECTION INCENTIVE	COUNTY		GROSS FEDERAL SHARE	NET FEDERAL SHARE
Rita & Dan	516-	240.00	240.00	.00	240.00	66.43	19.30	.00			154.27	154.27
Lorraine & Clayton	517-	259.00	35.00	.00	35.00	9.69	2.81	.00			22.50	22.50
George & Ben	517-	100.00	50.00	.00	50.00	13.84	4.02	.00			32.14	32.14
Marlys & Earl	517-	193.00	130.00	.00	130.00	35.98	10.45	.00			83.57	83.57
Theresa & Almon	516-	400.00	400.00	.00	400.00	110.72	32.16	20.82			257.12	257.12
Janette & John	538-	130.35	60.00	.00	60.00	16.61	4.82	.00			38.57	38.57
Carlotia & Robert	517-	150.00	150.00	10.00	160.00	44.29	12.86	.00			102.85	102.85
Janet & Walter	999-	50.00	50.00	.00	50.00	13.84	4.02	7.50 *	C47		24.64	24.64
	999-	.00	.00	40.00	40.00	11.07	2.01	.00			16.07	16.07
	999-	.00	.00	25.00	25.00	6.92	2.01	.00			16.07	16.07
	999-	.00	.00	50.00	50.00	13.84	4.02	.00			32.14	32.14
	999-	.00	.00	25.00	25.00	6.92	2.01	.00			16.07	16.07
	999-	.00	.00	25.00	25.00	6.92	2.01	.00			16.07	16.07
	999-	.00	.00	20.00	20.00	5.54	1.61	.00			12.85	12.85
	999-	.00	.00	30.00	30.00	8.30	2.41	.00			19.29	19.29
	999-	33.34	25.00	.00	25.00	6.92	2.01	.00			16.07	16.07
	999-	.00	.00	75.00	75.00	20.76	6.03	.00			48.21	48.21
	999-	.00	.00	5.00	5.00	1.38	.40	.00			3.22	3.22
Jane & Chris	516-	250.00	190.50	.00	190.50	52.73	15.32	.00			122.45	122.45
Patricia & George	517-	60.00	20.00	.00	20.00	5.54	1.61	.00			12.85	12.85

CS 601.3

Bradford Report No. 64-574

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



MARCRACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

FAX (406) 444-1370
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HELENA, MONTANA 59620-2943

November 12, 1997

To: All Manual Holders

From: Gwen Kloeber, Policy Development Officer *gk*

Subject: New Section CS 601.4, Request for Genetic Testing

Enclosed is a new Manual section implementing procedures by which a participant in a CSED paternity case may ask the CSED to order genetic testing. Welfare reform requires we make these procedures available--they are not a substitute for the processes the CSED regularly uses to establish paternity in the case. Please review the procedures and refer to them in applicable situations; we expect they will not apply in most cases.

The procedures involve two new forms: Request for Genetic Testing, and Request to Quash Genetic Testing Subpoena. These forms will be available as WordPerfect documents only.

INSTRUCTIONS FOR MANUAL MAINTENANCE

Insert the enclosed section; add the following entry to the Table of Contents, page 7, under "Paternity Establishment--General":

601.4 Request for Genetic Testing (11/12/97) pp 1-4

Enclosures

Department of Public Health and
Human Services

section:
PATERNITY ESTABLISHMENT

CHILD SUPPORT ENFORCEMENT

subject:
Request for Genetic Testing

SUPERSEDES: [new section]

REFERENCES: 42 USC §666(a)(5); MCA §40-5-233.

POLICY: In a CSED case an alleged father, a mother, or a child (through the child's custodian) may request the CSED order genetic testing to determine paternity. By law, the CSED must grant the request if it is supported by a sworn statement establishing a reasonable probability of sexual contact or lack of sexual contact (depending on whether the requestor is alleging or denying paternity).

The opportunity to request genetic testing is available regardless of whether the CSED has initiated an administrative paternity action under procedures beginning in section CS 602.1. However, if there is an action in progress, and the CSED orders genetic testing in that action, the request process outlined in this section will be redundant, and the CSED will not order a "second" test.

The CSED cannot initiate the request process, nor can the process be used as a substitute for any required paternity action; the process will not stop the running of the federal time frames for service of process and establishment. It is offered simply to provide access to testing for parties who can show a legal basis, and for whom testing would not otherwise be ordered. It is expected these situations will be rare. The CSED may excuse parties from genetic testing ordered under this section if there is good cause to do so based on the best interests of the child.

PROCEDURES:

Responsibility	ACTION
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Customer Service	
Unit	1.

Upon being contacted by a person requesting genetic testing to determine the paternity of a child, or making any equivalent assertion or request, determines whether the requestor is a participant (mother, alleged father, current custodian) listed on the SEARCHS CAPS screen in a CSED case involving the child. If so,

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Testing

refers the requestor to the caseworker for processing of the request. If not, explains requests are accepted only in CSED cases. If the requestor wishes to open a case by applying for CSED services, sends an application packet; if not, takes no further action.

Caseworker

2. Upon being contacted by a participant in a CSED paternity case who requests genetic testing, explains the process for administrative paternity establishment in CSED cases (sections CS 602.1, 602.2, 605.2, and 605.3), and the ways in which that process may result in voluntary or ordered genetic testing. If the requestor is not satisfied the regular establishment process will suit his or her purposes, explains the process for obtaining genetic testing under these PROCEDURES (section CS 601.4). If the requestor wishes to proceed, prepares and sends form CS-601.4A, Request for Genetic Testing.
3. Upon receiving a completed Request for Genetic Testing, enters a SEARCHS case note for the request received. Determines whether the CSED has initiated any formal or informal (NPR or mama/papa letter) paternity establishment actions involving the parties named in the request. If so, coordinates the two processes as applicable, contacting the requestor as needed. (For example, if the requestor is an alleged father in the paternity case, he may prefer to sign the Consent to Genetic Testing rather than submit to an additional interview under oath (see step 5). Or, if the requestor knows there is a good chance the other party will object to the request (see step 8), the requestor may prefer to allow the existing paternity establishment action to advance to the hearing stage.)

Discontinues procedures in this section at any time if the requestor withdraws the request. If the request is withdrawn by telephone, sends a letter confirming the telephone conversation. Enters a SEARCHS case note for the request withdrawn.

section: PATERNITY ESTABLISHMENT

subject: Request for Genetic
Testing

4. Reviews the request for completeness and forwards to the regional paralegal staff or designated paternity interviewer.
- Paralegal Staff
or Designated
Paternity
Interviewer
5. Schedules a telephone interview with the requestor. Arranges for the requestor to be put under oath at the beginning of the interview; conducts the interview on the evidence of the requestor to determine whether,
- if the requestor is alleging paternity, there is a reasonable probability of the requisite sexual contact between the parties named in the request, or
 - if the requestor is denying paternity, there is a reasonable probability of the nonexistence of sexual contact between the parties.
6. Issues--with copies to the caseworker and appropriate persons, and the original to the OALJ--written findings of fact, conclusions of law, and an agency decision
- granting the request for genetic testing if the reasonable probability required in step 5 is found. Proceeds to step 7.
 - denying the request for genetic testing if the reasonable probability required in step 5 is not found; proceeds to step 9.
- Enters a SEARCHS case note for the genetic testing interview held and the request granted or denied.
- Caseworker
7. If genetic testing request is granted, follows procedures in sections CS 604.1 and 605.2 or 605.3 and
- arranges genetic testing;
 - prepares form CS-605.2B, Genetic Testing Subpoena, and obtains the paternity interviewer's signature; and
 - processes the form, monitors for compliance, and takes actions as necessary to compel compliance.
- Coordinates as necessary with any ongoing paternity establishment actions in the case.
8. For a request granted in step 6, if a party

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named in the original request contacts the CSED objecting to the decision, explains the party may submit a request to "quash" (disallow) the order contained in the Genetic Testing Subpoena. Also explains (as in step 2) any pertinent ongoing processes that may result in genetic testing independently of the procedures in this section. If the objector still wishes to prevent the genetic testing granted in step 6, prepares and sends form CS-601.4B, Request to Quash Genetic Testing Subpoena.

9. For a request denied in step 6, if the requestor contacts the CSED objecting to the decision, explains the requestor may reapply, but if there is no new information to be presented at the interview, the decision will be the same. If applicable, also discusses possible bases for initiating formal action via an NPR, and proceeds as in section CS 605.2 or 605.3 if appropriate. If asked, explains there is no opportunity for judicial review of the denial.

OALJ

10. Upon receipt of a properly completed Request to Quash Genetic Testing Subpoena, informs the caseworker, and schedules and conducts a hearing on the request. Issues to be determined at the hearing are the same as those determined at a hearing on an NPR. Issues a decision and order from the hearing.

Caseworker

11. Prepares and presents the CSED case at hearing. If applicable, coordinates with any other opportunity for hearing that may be pending in the paternity case. If the decision and order resulting from the hearing upholds the Genetic Testing Subpoena, reschedules testing if necessary and monitors for compliance.

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Case Initiation--
Mother Oblige

SUPERSEDES: CS 602.1, Case Initiation--Mother Oblige, September 30, 1995.

REFERENCES: Sections 40-5-231 through 40-5-237, 40-6-101 through 40-6-118, and 50-15-210, MCA; Rule 301, Montana Rules of Evidence

DEFINITIONS: The following definitions apply to the terms used in this section:

- (1) Alleged father--a man who is named by the mother as a possible father of the child, who has not been excluded by genetic testing, and who is not a "presumed father" according to these definitions
- (2) Multiple-allegation--a case involving more than one alleged or presumed father
- (3) Negative (genetic testing results)--results conclusively showing the man could not be the natural father of the child
- (4) Paternity case--a case in which the child is born to an unmarried mother or to a married mother who claims the married father is not the true father; no man has genetically tested positive; there is no court or administrative order declaring paternity; and single- or multiple-allegation conditions apply
- (5) Positive (genetic testing results)--results showing a probability of 95% or higher the man is the natural father of the child
- (6) Presumed father--a man for whom a "presumption," as given in these definitions, applies, and who has not been excluded by genetic testing
- (7) Presumption--the basis the CSED uses to establish a support order in the absence of a paternity order. A presumption exists for a given allegation if any of the following situations applies:
 - (a) The child is born "of the marriage" (during the marriage or within 300 days after its termination or legal separation)
 - (b) There is a voluntary acknowledgment of paternity on file with the proper Montana agency and
 - the acknowledgment was signed before July 1, 1997, or
 - the acknowledgment was signed on or after July 1, 1997, and there is no notice of withdrawal filed with the birth records, or
 - the acknowledgment was signed on or after

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**subject: Case Initiation--
Mother Oblige**

July 1, 1997, and there is a notice of withdrawal filed with the birth records, but the notice was filed later than 60 days after the date the acknowledgment was signed.

An acknowledgment signed on or after July 1, 1997, creates an **irrebuttable** presumption of paternity if

- it remains in place without being rescinded (through a notice of withdrawal) for 60 days after it is signed, or
- at any time after the acknowledgment is signed, a support order is established and both parents are parties to the support order establishment proceeding.

- (c) There is a notice of intent to claim paternity dated prior to October 1, 1997, on file with the proper Montana agency, the mother has not denied the claimant is the father, and the child has now been born
- (d) There is a court order obligating the alleged father to support the child
- (e) Results of genetic testing show a 95% or higher probability of paternity
- (f) Paternity is presumed or established in another state but there is no order declaring paternity
- (g) The CSED staff attorney approves case evidence supporting one of the following situations:
 - (i) There is a marriage after the child is born, and the alleged father signs a written voluntary promise of child support
 - (ii) There is a marriage after the child is born, and the alleged father's name is listed on the birth certificate with his consent
 - (iii) The alleged father has represented the child to be his natural child.
- (8) Resolving/resolution--the CSED process that causes a change in case activity status from "paternity" to "order establishment;" may be by presumption or order
- (9) Single-allegation--a paternity case involving only one alleged father and no presumed fathers, or one presumed father whose paternity is denied by the mother and no other alleged or presumed fathers.

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subject: Case Initiation--
Mother Obligee

POLICY: Conditions for Case Initiation. The procedures in this section apply only when (1) the case meets the conditions for a "paternity case" given in the DEFINITIONS and (2) the child's natural mother is the obligee in the case (when the obligee is not the natural mother but a "third party," see section CS 602.2 for case initiation procedures.)

NOTE: Proceeding for Unknown, Unlocated Allegations. The CSED does not delay in initiating a case under these procedures solely because an alleged father's name or location is not known; the name or location may be discovered during or as a result of the procedures.

Change in Case Status by Presumption or Exclusion. As the CSED obtains new presumptions, or excludes alleged or presumed fathers by genetic testing, the "paternity" status of a case may change. For example, a single-allegation case **ceases to be a paternity case** when the CSED obtains or discovers a presumption of any type for the alleged father; a multiple-allegation case becomes a single-allegation case when the CSED excludes all but one alleged or presumed father; and a multiple-allegation case ceases to be a paternity case when the CSED obtains a genetic testing presumption for one of the men in the case. Once paternity is resolved, the case is considered a support order establishment case, and the CSED proceeds as in section CS 401.3.

Information Gathering. The primary tool for initiating a paternity case is the Paternity Affidavit. This is the form the CSED uses to gather essential information from the mother relating to the paternity of the child. In addition to the Paternity Affidavit the caseworker also checks certain other sources for information about the paternity. These sources may include

- the existing case file,
- the public assistance referral or the Non-public assistance application in the case,
- the CSED Paternity Clearinghouse (of hospital acknowledgments after February 1994 and before implementation of electronic birth records),
- the CSED Paternity Registry (of paternity orders and genetic testing results),
- birth records maintained by the Montana Vital Statistics Bureau (VSB),
- further information obtained by the caseworker directly from the mother,

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Mother Oblige

- other information obtained by the CSED public assistance liaison from the mother or other sources, and
- records and paternity determination procedures of another state or jurisdiction.

The order in which the caseworker administers the Paternity Affidavit and accesses these other sources depends on the facts of the case, as shown in the detailed procedures in this section. Generally the caseworker is attempting to find the most efficient way to assemble reliable information relating to (1) the identity of possible fathers, (2) any existing presumptions previously unknown to the CSED, (3) Montana's jurisdiction to establish paternity, and (4) the basis for proceeding against each alleged father. Information from other sources may repeat, support, expand, or contradict information in the completed Paternity Affidavit.

Proceeding in Multiple-Allegation Cases. In initiating a multiple-allegation case the caseworker follows the procedures in this section for **each** alleged or presumed father, heeding restrictions as noted later in this POLICY. The caseworker determines, according to the facts of the case, whether to proceed with a particular case initiation step for all of the alleged or presumed fathers, or to proceed for certain alleged or presumed fathers first, using the resulting information to determine when and if to resume case initiation for the others. (Exceptions to serial processing: (1) Paternity Affidavits are usually administered for all known alleged and presumed fathers at the same time. (2) Steps involving records searches are performed only once for each case. (3) For every located alleged or presumed father identified in a case referral or application, the CSED is required to promptly notify the man of the mother's written claim of paternity against him, regardless of whether the CSED intends to proceed further against the man at that time; see section CS 601.3 for procedures.) Note that a case may start out as a single-allegation case and **become** a multiple-allegation case (for example, the CSED may receive a completed Paternity Affidavit and find that the mother has named other possible fathers).

Opportunity for Cooperation by Alleged or Presumed Father. The procedures in this section are designed not

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**subject: Case Initiation--
Mother Oblige**

only to gather information, but also to provide an opportunity for the alleged or presumed father to cooperate in resolving the paternity in the early stages of the process. Specifically, the CSED provides an opportunity for the alleged or presumed father

- to request genetic testing to determine the probability of paternity, or
- in single-allegation cases, to admit paternity under oath, allowing the CSED to enter a "consent" order establishing paternity based on the admission.

Either of these options eliminates the need for legal notice and hearing to resolve the paternity allegation.

Administering the Paternity Affidavit. Except as noted below the CSED sends the mother one Paternity Affidavit for each known alleged or presumed father (if any returned Affidavit names others, the CSED then sends additional Affidavits). The mother is asked in the cover ("Mama") letter to complete the Affidavit, provide her notarized signature, and return the Affidavit to the CSED within 10 calendar days.

EXCEPTION: If the CSED discovers and confirms a presumption for the alleged father in a single-allegation case, the Paternity Affidavit is not required.

If the Affidavit is not timely returned, the CSED notifies the public assistance agency the mother has not cooperated with the CSED, or begins case closure in the Non-public assistance case. (In public assistance cases where the mother is not included in the assistance benefit, the CSED "subpoenas" the completed Affidavit from the mother using the process of subpoena duces tecum, and the investigative subpoena authority, described in section CS 405.12.) Also in a public assistance case, if the returned Affidavit names men who were not included in the original referral, the CSED cannot proceed against these men until they are added to the referral electronically. If the mother does not timely provide revised information to the IV-A agency, the CSED notifies the public assistance agency the mother has not cooperated with the CSED.

Period of Conception. The Paternity Affidavit is used not only to gather evidence supporting a paternity allegation, but also to check on the biological validity

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Mother Obligee

of the allegation. The caseworker uses the date the child was born (or in the case of a premature or overdue birth, the date the child should have been born) to determine the probable period of conception. If the dates the mother gives in the Affidavit for sexual intercourse with the alleged father do not coincide with the period of conception, the allegation is dropped from the case.

To determine the starting and ending dates of the probable period of conception the caseworker counts backward 286 and 246 days, exactly, from the child's birth date. This allows for accepted ranges in both the date of fertilization and the period of gestation. Various tools are available to regions for calculating the period of conception, including the manually operated "paternity wheel" and a LOTUS spreadsheet.

NOTE: Period of Conception Not Reducible. To allow for consideration of all possible allegations (including future allegations) in the case, it is essential to enter and retain on system the **entire** period of conception, even when it appears paternity will be established based on sexual contact on a specified date.

Contact with the Alleged or Presumed Father. Upon receiving a written paternity claim from the mother, the CSED sends the notification letter required in section CS 601.3. Then, upon determining jurisdiction, the CSED initiates the paternity case by sending the "Papa letter." This non-confrontational letter informs the alleged or presumed father he has been named as the father of the child; it also explains the process of establishing paternity and the options available for resolving the allegation without legal action. The letter encloses a Consent to Genetic Testing, which offers the alleged or presumed father the opportunity to resolve the matter through voluntary genetic testing. In a single-allegation case the Papa letter also encloses an Admission of Paternity for the alleged father to sign and return, notarized, to the CSED. In multiple-allegation cases the standard Papa letter does not enclose an Admission of Paternity.

NOTE 1: Admission of Paternity in Multiple-Allegation Cases. In multiple-allegation cases the CSED will not accept an Admission before it obtains positive genetic testing results for the alleged or presumed father (see

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subject: Case Initiation--
Mother Obligee

"Restrictions" later in this POLICY). If positive testing results are obtained, it will be appropriate (and desirable) at that time to seek an Admission. If the CSED receives a signed Admission of Paternity in a single-allegation case that becomes a multiple-allegation case, the Admission is not acceptable until the CSED obtains positive genetic testing results for the admitting man, and he signs a multiple-allegation variation of the Admission acknowledging there were other alleged or presumed fathers in the case.

NOTE 2: Concurrent Papa and Mama Processes. Because of the strict time frames affecting paternity establishment, the CSED must contact the alleged or presumed father and administer the Paternity Affidavit within the same time period. (If the returned Paternity Affidavit contains a new allegation, the CSED will send the mother an Affidavit for that man and, concurrently, will send the corresponding Papa letter.) It is generally not appropriate to wait for return of the Affidavit to send Papa letters.

NOTE 3: Options for Using the Papa Letter. The following options are available for the CSED's initial contact with the alleged or presumed father:

- (1) Contact through the mother (single-allegation cases only)--the mother may be better able than the CSED to persuade the alleged father of the advantages of cooperation. If so, the caseworker can elect to send the Papa letter and the Admission of Paternity to the mother along with the Paternity Affidavit. A revised Mama letter then asks for assistance in delivering the Papa letter and Admission, and in obtaining the signature of the alleged father.
- (2) Omitting Papa letter--in certain situations it may be necessary or advisable to forego the initial contact, and to proceed with other actions for the man according to the facts of the case. Examples of these situations (and appropriate CSED actions) are as follows:
 - (a) The CSED must omit the Papa letter when the alleged or presumed father is under the age of 18. (Upon receipt of returned Affidavit, proceed directly to service of process, noting special requirements for service of minors in section CS 605.2.)

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Mother Obligee

- (b) The CSED may omit the Papa letter when
- there is reason to believe the alleged or presumed father will remove himself from the CSED's jurisdiction if he is informed of the paternity case (upon receipt of returned Affidavit, proceed directly to service of process, section CS 605.2 or 605.3); or
 - it appears from the facts of the case the allegation will not be supported by the returned Affidavit (await returned Affidavit; if action necessary, proceed directly to service of process, section CS 605.2 or 605.3); or
 - (multiple-allegation cases only) the chances of being able to resolve the paternity without involving the alleged or presumed father are very good (attempt to resolve paternity for other allegations; if action finally necessary for this man, upon receipt of returned Affidavit proceed directly to service of process, section CS 605.3).

Restrictions in Multiple-Allegation Cases. Montana statute and CSED policy allow establishment of paternity in multiple-allegation situations ONLY when one of the "RULES" listed on the following page applies. Note that voluntary genetic testing is the key to resolving a multiple-allegation case at this stage: positive genetic testing not only provides a presumption for the man tested, but also automatically excludes all other men in the case. The caseworker must determine how to proceed to obtain voluntary testing from the necessary man or men in the shortest time (see "Time Frames" for resolving paternity, later in this POLICY), and must be prepared to proceed immediately to "contested case" procedures (section CS 605.3) to obtain an order for genetic testing if a necessary man will not cooperate. See section CS 604.1 for specific policy on negotiating voluntary genetic testing and payment of testing costs.

NOTE: Advantage of Consent to Genetic Testing. In arranging for voluntary genetic testing the caseworker should attempt to have the man sign a Consent to Genetic Testing.

section: ESTABLISHING
PATERNITY

subject: Case Initiation--
Mother Oblige

RULES FOR RESOLVING PATERNITY IN MULTIPLE-ALLEGATION CASES

The following RULES assume genetic testing will result in either a presumption (positive results) or an exclusion (negative results). The rules also assume it will be impossible to obtain positive genetic testing results for more than one man in a case. If either assumption should prove false, consult your CSED staff attorney.

RULE 1: The CSED will enter a Paternity Consent Order if either of the following applies:

- (1) An AF or PF signs an Admission of Paternity (multiple-allegation version) AND the same AF or PF genetically tests positive (if there are other PFs, the order should include language overcoming the other presumptions)
- (2) An AF or PF signs an Admission of Paternity (multiple-allegation version) but does not undergo genetic testing, AND all other AFs and PFs are excluded by genetic testing.*

RULE 2: If RULE 1 does not apply, the CSED will proceed with establishment of a support order (without entering a paternity order) if either of the following applies:

- (1) An AF or PF genetically tests positive
- (2) One PF in the case does not undergo genetic testing AND all other AFs and PFs are excluded by genetic testing.*

RULE 3: The CSED will enter a Paternity Default Order for an AF or PF only if default conditions (failure to respond to notice or appear as ordered) apply AND all other AFs and PFs are excluded by genetic testing.* [This RULE is not applicable to case initiation procedures, except where AF or PF defaults after Consent to Blood Test.]

RULE 4: The CSED will proceed with establishment of a support order (without entering a paternity order) for an AF or PF who is declared father by the judicial or administrative paternity order of another state. This RULE is superior to RULES 1, 2, and 3.

* In highly unusual cases where genetic testing is not available to exclude an AF or PF, it may be possible to exclude the AF or PF by an action in district court or--upon a determination by the CSED staff attorney based on the facts of the case--to proceed as if the AF or PF were excluded.

AF = alleged father (no presumption)

PF = presumed father (per CSED definition of "presumption")

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This removes any future requirement for a hearing under section CS 605.3, obtains the man's agreement to pay genetic testing costs, and in certain situations (see RULES) allows the CSED to enter a Default Paternity Order if the man does not appear for testing.

Voluntary Genetic Testing--Requirements of Mother. It may happen that an alleged or presumed father is willing to participate in genetic testing but the mother will not cooperate. In this situation the CSED--after making every effort to obtain her cooperation--notifies the public assistance agency the mother has not cooperated, or begins case closure proceedings in the Non-public assistance case. (In public assistance cases where the mother is not included in the assistance benefit, the CSED "subpoenas" the cooperation of the mother by adaptation of the Genetic Testing Subpoena.)

Determining Jurisdiction. [The following guidance does not apply to cases where any of the parties is Native American. To determine jurisdiction in Native American cases, refer to section CS 250.1.] The CSED does not need jurisdiction to resolve paternity in non-contested cases under this section. However, in cases where application of the case facts, voluntary genetic testing, Admission of Paternity, or a combination of these is not sufficient to resolve paternity, the CSED must assert jurisdiction over an alleged or presumed father before proceeding in a "contested case" (sections CS 605.2 and 605.3) against him. The CSED has a basis for asserting jurisdiction over an alleged or presumed father if any of the following conditions applies:

- (1) He is personally or by certified mail served with notice in Montana
- (2) He submits to Montana jurisdiction by consent, by waiver of contest, or by entering a general appearance
- (3) He resided with the child in Montana
- (4) He resided in Montana and provided prenatal expenses or support for the child
- (5) The child resided in Montana as a result of his acts or directives
- (6) He engaged in sexual intercourse in Montana and the child may have been conceived by the act of intercourse
- (7) There is any other basis for jurisdiction under the Montana and U.S. constitutions.

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If none of the above conditions applies (the CSED has no basis for asserting jurisdiction), the CSED may attempt to create a basis by requesting the alleged or presumed father sign a Waiver of Jurisdiction, satisfying condition (2).

To assert jurisdiction in any of the above conditions the CSED must serve notice on the man by personal service or certified mail. Where one of the above conditions applies and the alleged or presumed father is located out of state, federal regulations **require** that the CSED assert its own jurisdiction to establish paternity whenever possible. This means the CSED must attempt to obtain service on the man directly through personal service (for example, by a sheriff) or certified mail.

Where the CSED cannot assert jurisdiction over a particular alleged or presumed father in a case, the case is referred to the state most likely to be able to assert jurisdiction over him.

Contested Case--Determining Reasonable Cause. If paternity cannot be resolved under this section, the CSED must initiate contested case actions against the appropriate men under section CS 605.2 or 605.3. To serve notice in a contested paternity case, the CSED must have "reasonable cause" to believe an alleged or presumed father **could be** the child's natural father. Generally this means there is some indication the man had sexual intercourse with the mother during the possible period of conception. In most cases the information on the returned Paternity Affidavit or (if applicable) the documentation establishing a presumption of paternity is sufficient to establish reasonable cause for proceeding against the man named. In questionable cases, consult the CSED staff attorney.

Time Frames. CAUTION! Federal time frames affecting paternity establishment are very strict. **The caseworker must manage all decisions and actions in this section in a way most likely to meet the following federal requirements:**

- (1) If paternity is not resolved under this section, the CSED must, for each alleged or presumed father not excluded, within 90 days after the man was located, serve notice on him of both parental responsibility and financial responsibility.

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- (2) If paternity is resolved under this section, the CSED must, within 90 days after the man determined to be the father was located, serve notice on him of financial responsibility.

**PROCEDURES
RESPONSIBILITY**

ACTION

Reminder: Except where otherwise noted, the following procedures apply to the same man from beginning to end.

Caseworker

1. In conjunction with caseworking actions under these PROCEDURES performs required system processing as follows:

- a. Upon receiving case, and upon identifying any additional allegations, reviews following SEARCHS screens and enters data as needed:

<u>Screen</u>	<u>Required Data (partial listing)</u>
CAP	Information for mother, child, and AF or PF, including relationship for all non-child participants; shows child attached to mother
CHL	Shows AF or PF attached to child; also shows paternity history of child (critical for federal reporting)
PAR	Information for mother, child, AF or PF on date of birth, place of birth, address (for AF/PF, must have home address), Native American designation
PAN	Mother's maiden name, all of mother's aliases (former married names), any AF/PF aliases
API	Physical description of AF/PF

If necessary in public assistance case, consults TEAMS (various screens) for information, and enters on above SEARCHS screens.

- b. Whenever in steps 2 through 17 status of participant changes from alleged to presumed father, or participant is removed from case (by exclusion, for example), updates SEARCHS via CHL screen and, if applicable, notifies public assistance agency of change in

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participant's status.

- c. If at any point in steps 2 through 17 paternity is resolved in case, updates SEARCHS via CHL screen to show date and method of establishment and participant determined to be father; if applicable, notifies public assistance agency of paternity establishment.

NOTE: CHL Screen Critical. Proper completion and updating of the CHL screen is essential for compliance with federal audit requirements. See latest SEARCHS instructions for proper updating of establishment method, at-issue status, and other reporting-related CHL information.

2. Upon receipt of public assistance referral or Non-public assistance application in a case in which paternity is at issue, prepares and sends form CS-601.3A, Notification of Paternity Claim Letter, to alleged or presumed father according to procedures in section CS 601.3. (NOTE: This step may **not** be delayed for, or combined with, father's paternity packet sent in step 3d, unless all requirements under section CS 601.3 for timeliness and confidentiality of notification can be satisfied.) Monitors for circumstances requiring use of form CS-601.3B, Paternity Claim Follow-Up Letter, and executes as in section CS 601.3.

Proceeds with the following determinations:

- a. Was the child born in Montana?
- If yes, proceeds to step 2b.
 - If no, investigates whether paternity has been established by order in other state.
 - > If so, obtains copy of order for case file, updates SEARCHS as in step 1c, and proceeds to establish support order. END OF PATERNITY PROCESS
 - > If not, identifies any presumption created in other state and retains information in file; proceeds to step 3.

NOTE: Non-U.S. Births. For purposes of paternity establishment, Canada and all U.S.

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territories and possessions are treated as "states." For births in foreign countries consult your CSED legal staff for possible adaptation of case initiation and subsequent procedures.

- b. Is the mother or alleged or presumed father Native American?
 - If yes, follows procedures in section CS 250.1; returns to this section if and when Montana state jurisdiction applies.
 - If no, proceeds to step 3.
- 3. Obtains information and initiates contacts concurrently as follows:
 - a. Prepares and sends form CS-602.1D, Request for Birth Records, to Administrative Support Unit (ASU) in Helena. In multiple-allegation cases with births on or after February 1, 1994, attaches note to request form stating VSB birth records needed in addition to any acknowledgment found in Paternity Clearinghouse.

NOTE: Completion of Request Essential. If any field on the Request for Birth Records is left blank, ASU will return the form to the requester for completion.

- b. If there is some indication CSED Paternity Registry may contain applicable genetic testing results, requests search of Paternity Registry; sends request to CSED Office of the Administrative Law Judge (OALJ) by electronic mail or in writing. Request must include alleged or presumed father's name.
- c. Prepares and sends mother's paternity packet containing
 - Form CS-602.1A, Letter to Mother (accompanied by paternity information for parents information sheet, explaining rights, responsibilities, and consequences)
 - Form CS-602.1C, Paternity Affidavit
 - (if alleged or presumed father resides or may reside outside Montana) Form CS-

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408.3C, Long Arm Jurisdiction
Questionnaire.

d. Prepares and sends father's paternity packet containing

- Form CS-602.1B, Letter to Father (appropriate version, single- or multiple-allegation)
- Form CS-606.2F, Consent to Genetic Testing
- (single-allegation cases only) Form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order (accompanied by paternity information for parents information sheet, explaining rights, responsibilities, and consequences)

NOTE: If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the "multiple-allegation" version of the Admission form, containing informed consent language, is required. In this situation the form must be adjusted to remove the reference to positive genetic testing results.

- (if alleged or presumed father resides or may reside outside Montana) Form CS 405-5, Waiver of Personal Jurisdiction.

NOTE: Use of Waiver Optional. Where this form is not needed because long-arm jurisdiction already applies, or where there is reason to believe the use of this form may jeopardize federal time-frame compliance or the success of paternity establishment in the case, the caseworker may elect to omit it.

NOTE: "Unknown" or Unlocated Father. If the alleged or presumed father cannot be named or cannot be located, the caseworker should proceed with applicable steps in these PROCEDURES wherever possible, in preparation for informal contact or service of process when the man is finally located.

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- ASU Staff
4. Upon receipt of properly completed Request for Birth Records, proceeds in 4a or 4b as appropriate.
 - a. If child was born on or after February 1, 1994, and before July 1, 1997, and case in question is single-allegation case, searches Paternity Clearinghouse files for voluntary acknowledgment. If found, makes copy of acknowledgment, stamps copy to indicate it is true and correct, affixes Montana state seal, and mails to requester within 8 working days of receiving request. Enters SEARCHS event for positive in-house paternity. Takes no further action.
 - b. If step 4a does not apply, or if no acknowledgment found, proceeds to step 5.
 5. Searches VSB files for birth records and other pertinent documents. Copies, stamps, and affixes seal to records, any acknowledgment, and any notice of withdrawal of acknowledgment; mails to requester within 8 working days of receiving request. If birth records not found, verifies information and retains request; searches VSB files periodically.
- OALJ Staff
6. Upon receipt of proper request, searches Paternity Registry for genetic testing results. If found, copies records and mails to requester within 5 working days of receiving request. If not found, sends request back to requester within 5 working days with notation information not found.
- Caseworker
7. Upon receipt of birth records, any voluntary acknowledgment or notice of withdrawal, or any genetic testing results, from VSB, CSED Paternity Clearinghouse, or CSED Paternity Registry, reviews information for presumptions or exclusions, and retains in case file. If necessary, updates SEARCHS as in step 1b.

For any unwithdrawn acknowledgment less than 60 days old and signed on or after July 1, 1997, before finalizing any proceeding in section CS 401.3 to establish support order based on presumption, requests ASU check again with VSB for any notice of withdrawal.

8. Monitors for return of Paternity Affidavit within

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subject: Case Initiation--
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10 days after mailing date.

a. If Affidavit timely returned, reviews for completeness. Determines period of conception according to POLICY, this section, and enters dates on SEARCHS (CHL screen). Takes **any or all** of following steps, as indicated by review:

- i. Returns Affidavit to mother, explaining where further information required.
- ii. Schedules and conducts interview with mother to complete Affidavit.
- iii. Contacts CSED public assistance liaison for assistance in obtaining necessary information from mother or other sources. (This option is used mostly in cases with "unknown" allegations, or where an in-person interview is needed in a remote location.)
- iv. If information in Affidavit re: dates of conception and sexual contact rules out alleged father*, removes man from case and updates SEARCHS as in step 1b, and
 - in single-allegation cases contacts mother about other possible allegations (or requests assistance from liaison as in substep iii above). If other allegations identified, proceeds as in step 8a(v) below; if no other allegations identified, proceeds as for unreturned Affidavit (step 8b).

NOTE: "Unknown" Allegations. An allegation against a man whose name, identity, and location are "unknown" is considered a valid allegation for the above purposes if the mother is willing to work with the CSED to try to identify the man.

- in multiple-allegation cases takes no further action for the removed man; proceeds (or continues) with appropriate steps for other allegations.

* If Affidavit contradicts an existing

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presumption, consults CSED legal staff.

- v. For any allegations not previously listed in case records,
 - sends notification letter as in step 2;
 - sends additional Paternity Affidavit to mother; in public assistance case includes special request to mother to add new allegations to assistance application, and alerts public assistance worker to new allegations; if necessary, requests assistance of liaison as in substep iii above. Upon return of Affidavit updates SEARCHS as in step 1a; and
 - sends father's paternity packet (step 3d).

- vi. If Affidavit or other information now in case file provides presumption,
 - in single-allegation case, updates SEARCHS as in step 1c and proceeds to establishment of support order.
END OF PATERNITY PROCESS
 - in multiple-allegation case, updates SEARCHS as in step 1b and proceeds to step 9.

- b. If Paternity Affidavit not timely returned, notifies assistance agency mother has not cooperated, or begins case closure in Non-public assistance case. In public assistance case where mother not included in assistance benefit, consults with CSED legal staff and follows procedures in section CS 405.12 for subpoena duces tecum to compel mother to complete and submit Affidavit.

EXCEPTION: In single-allegation case with confirmed presumption (Affidavit not required), updates SEARCHS as in step 1c and proceeds directly to establishment of support order.

- 9. If alleged or presumed father returns signed and notarized Admission of Paternity and Application for Paternity Consent Order, proceeds as follows:

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Mother Oblige**

- a. In single-allegation cases, updates SEARCHS as in step 1c and proceeds as in section CS 606.2, Paternity Consent Order.
 - b. In multiple-allegation cases, contacts admitting father and explains CSED will not accept Admission without confirmation by genetic testing; attempts to negotiate voluntary testing as in step 10.
10. If alleged or presumed father contacts CSED to discuss voluntary genetic testing, attempts to negotiate agreement to voluntary testing according to procedures and policy in section CS 604.1, Genetic Testing. If alleged or presumed father agrees to voluntary testing, proceeds to step 11; if not proceeds to step 16.
 11. If alleged or presumed father signs and returns Consent to Genetic Testing, or agrees to voluntary genetic testing after discussion with CSED and does not sign Consent to Genetic Testing, follows procedures in section CS 604.1 for scheduling, monitoring, obtaining results, and settling costs of genetic testing.
 12. **Upon receipt of positive genetic testing results, takes concurrent actions as follows:**
 - a. Sends package to father containing
 - Form CS-601.1R, Genetic Testing Results Cover Letter
 - Copy of genetic testing results
 - Form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order, if acceptable version not already obtained (accompanied by paternity information for parents information sheet, explaining rights, responsibilities, and consequences; information sheet may be omitted if previously sent to this man in same case)

NOTE: If the case involved multiple allegations before genetic testing, the "single-allegation" version of the Admission is **not** acceptable.

- Financial Affidavit (optional--may be

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included if father likely to cooperate voluntarily with order establishment; see step 12e below).

- b. Sends package to mother containing
 - Cover letter (regional or custom) explaining results and next CSED actions, and requesting mother's cooperation in returning Financial Affidavit
 - Copy of genetic testing results
 - Financial Affidavit (optional).
- c. Sends original results to CSED Paternity Registry at OALJ.
- d. Updates SEARCHS and, if applicable, notifies public assistance agency as in step 1c (does **not** send copy of actual testing results to assistance agency). In multiple-allegation cases, also updates SEARCHS as in step 1b to show exclusion of **all other alleged and presumed fathers in case**.

NOTE: Confidentiality of Testing Results. The printed testing results received from the contracted testing laboratory, listing the probability of paternity and other scientific data, are **confidential**. The caseworker may give to the public assistance agency only the general information that genetic testing did or did not provide a presumption of paternity.

- e. **Immediately** proceeds to establishment of support order as in section CS 401.3.
13. Following notification of father about positive results, takes action as follows:
- a. If father signs and returns Admission (or if acceptable Admission already obtained), updates SEARCHS for Admission as in step 1c and proceeds as in section CS 606.2, Paternity Consent Order. (NOTE: This step is applicable even after a support order is established.)
 - b. If father contacts CSED and continues to deny paternity, proceeds as in section CS 606.4, Referral to District Court. (Continues with

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support order establishment, step 12e, during referral process.)

14. Upon receipt of negative genetic testing results, takes actions as follows:

- a. Sends package to man tested containing
 - Cover letter (regional or custom) explaining results
 - Copy of genetic testing results.
- b. Sends package to mother containing
 - Cover letter (regional or custom) explaining results and, if applicable, requesting mother's cooperation in naming other allegations
 - Copy of genetic testing results.
- c. Sends original results to CSED Paternity Registry at OALJ. Retains copy for file.
- d. Updates SEARCHS and notifies public assistance agency as in step 1b (does not send copy of actual testing results to assistance agency--see NOTE in step 12d). Also,
 - in single-allegation cases, reviews case information and questions mother about other possible allegations. If other allegations, including "unknowns," identified, proceeds as in step 8a(v) for each new allegation. If no other allegations identified, proceeds as in step 8b.
 - in multiple-allegation cases, retains results in case file as evidence excluding the man as father, and takes no further action for excluded father; proceeds (or continues) with appropriate steps for other allegations.

15. [step 15 deleted]

OALJ

16. For cases where paternity cannot be resolved under this section, determines whether jurisdiction can be asserted based on criteria listed in POLICY. If so, proceeds to step 17.

If not, identifies proper responding state for

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interstate referral, and proceeds as follows:

- a. If Waiver of Jurisdiction not sent with Papa letter in step 3 and
 - there is strong likelihood man will consent to Montana jurisdiction and time frames for compliance in case permit, sends form CS-405.5, Waiver of Personal Jurisdiction; proceeds with interstate referral as in step 16b if waiver not immediately returned. If waiver immediately returned, proceeds to step 17. If waiver returned after interstate referral sent, and if appropriate based on facts of case, dismisses interstate referral and proceeds to step 17.
 - consent to jurisdiction not likely or time frames demand referral action be taken immediately, refers case to other state as in step 16b and, simultaneously, sends form CS-405.5, Waiver of Personal Jurisdiction. If waiver returned, dismisses interstate referral and proceeds to step 17.
- b. If Waiver of Jurisdiction already sent with Papa letter in step 3 and not returned, begins process to refer case to other state for paternity establishment. Monitors for completion of action by other state; upon completion updates SEARCHS as in step 1c and proceeds to establishment of support order.
END OF PATERNITY PROCESS.

NOTE: Jurisdiction in Foreign Country. If jurisdiction appears to lie with a foreign country, consult your CSED staff attorney.

17. Determines whether reasonable cause exists to proceed with "contested case" against this alleged or presumed father, based on requirements listed in POLICY under "Contested Case." If it does, follows procedures in section CS 605.2 or 605.3. If it does not, either
 - removes man from case, updating SEARCHS as in step 1b; processes other allegations, or
 - retains man as participant in case; attempts to obtain further information to support reasonable cause.

Department of Social and
Rehabilitation Services

Section:**UNESTABLISHED PATERNITY****Subject:**

Initiation of Paternity Cases (AFDC,
(NAFDC, and Automatic Continued Cases
Only)

CHILD SUPPORT ENFORCEMENT

POLICY: The procedures set out in this Subsection are to be
used whenever:

1. The child's mother is a recipient of AFDC benefits for the child, is receiving automatic continued NAFDC services following the receipt of AFDC, or NAFDC services; and,

NOTE: Procedures for "grandma" cases are set out in Subsection 602.2.

2. The paternity of the child needs to be established; and,
3. The man or men (or some of them) who are alleged to be the possible father of the child are identified; and,
4. The location of the man or men (or some of them) is known.

**PROCEDURE
RESPONSIBILITY**

ACTION

.Caseworker:

1. Except as provided in step 2, prepares paternity action package #1.
 - a. Form CS-602.1A, "Cover Letter"
 - b. Form CS-606.2A, "Admission of Paternity"
 - c. Form CS-602.1C, "Paternity Affidavit"
2. If the AFDC referral or other case information shows that there may be more than one alleged father or that there is a presumed father (See Section 601.1) and one or more alleged fathers, prepares paternity action package #2 for each alleged and/or presumed father.
 - a. Form CS-602.1A, "Cover Letter" (one letter only)
 - b. Form CS-602.1C, "Paternity Affidavit"

NOTE: DO NOT include Admission of Paternity form with action package # 2. To protect

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Initiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

alleged fathers who may not know that other men could be the child's natural father, CSED policy in multiple allegation cases is not to solicit Admission of Paternity forms unless paternity is shown to be probable by genetic blood testing or other alleged/presumed fathers have been eliminated from contention by genetic blood test results.

3. Mails or delivers the paternity action package to child's mother. Calendars for return.

4. Prepares and mails the information letter (form CS602.1B, the "papa" letter) to alleged father (single allegation cases only).

.Mother

5. For paternity action package #2, mother is required to complete the Paternity Affidavit for each alleged and/or presumed father. For action package #1, the mother is also required to:

a. Promptly after receipt of the package, make reasonable effort to contact alleged father, either in person, by telephone or mail; and

NOTE: Whenever child's mother does not know alleged father's location, upon successful locate by CSED, convey his address to mother together with paternity action package. The address may be typed on the bottom of the cover letter (CS 602.1A).

b. Present Admission of Paternity form to alleged father and request that he complete and sign this form before a Notary Public; and,

c. Fill out and answer questions in Paternity Affidavit and sign the Affidavit before a Notary Public; and

d. Return the completed and signed Affidavit and the completed and signed Admission form (if the alleged father signed it) to the CSED by the calendared date.

NOTE 1: The child's mother must make a reasonable effort to contact the alleged father. Merely attempting to telephone him or to visit him when he

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is not at home would not be considered as a reasonable effort, e.g., if mother knows where to contact alleged father she must continue the efforts to contact him until she in fact makes such contact. If unable to reasonably contact him on or by the calendared date, she must verify her efforts by completing Part I of the Paternity Affidavit. If there is doubt as to the mother's efforts, the caseworker may request additional verification. If the mother makes no effort to contact alleged father or if efforts taken were not reasonable, non-cooperation becomes an issue.

NOTE 2: Under the above circumstances, consult your regional supervisor. The supervisor must use reasonable discretion in determining whether or not the mother must make further efforts to contact the father. In all cases, CSED must proceed with determination of the paternity action, unless in AFDC cases cooperation is excused by IV-A.

.Caseworker

6. If mother fails to return forms by calendared date, cites AFDC cases for non-cooperation. For NAFDC and automatic continued NAFDC service cases, initiates case closure procedures. If forms are returned but are not complete or properly signed, returns forms to mother with appropriate instructions. Calendars for return.
7. If signed Admission of Paternity form is returned, reviews jurisdiction questions on Paternity Affidavit. If jurisdiction is appropriate in Montana (as defined by following note) proceeds to Section 606.2.

If jurisdiction is not appropriate in Montana, processes a URESA petition to state with appropriate jurisdiction. Attaches verified photo-copy of Admission of Paternity form to URESA petition as an exhibit. Retains original Admission of Paternity form in case file.

NOTE: Jurisdiction is generally proper whenever one of the following circumstances is found to occur:

- a. The alleged father can be found and served with process in Montana;

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

- b. The child was conceived by act of sexual intercourse in Montana even though the alleged father may reside in another state;
 - c. A non-resident, alleged father is transacting any form of business in Montana or enters into any contract to provide services or materials to be used in Montana;
 - d. A non-resident, alleged father has other significant contact with Montana. (this possibility can only be determined by consulting one of the CSED Staff Attorneys)
8. If the mother returns only the Paternity Affidavit (alleged father refused to admit paternity) proceed to Section 605.1.
9. If after receipt of the "papa" letter, or after contact by mother, the alleged father contacts the CSED and states that he would admit paternity if he could be assured the child is his, refer to procedures set forth in Section 604.1.

UNESTABLISHED PATERNITY**Initiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)**TO: _____

DATE: _____

SUBJECT: Paternity of: _____
 Date of Birth: _____
 Father's Name: _____

Dear

This agency is responsible for establishing the legal paternity for the child(ren) named above. Federal law requires such action. Federal law also requires that you help us by truthfully identifying and locating the child's father. If you do not help us try to establish the paternity of your child, the Department may terminate or reduce your AFDC grant. If you are not receiving AFDC, we may close our Non-AFDC case if you do not help us.

Included with this letter are two Admission of Paternity forms. You are to present these forms to the man named by you as the child's father and request that he sign them. You may do this in person, by telephone, or by mail. Please note that the father must sign these Admission of Paternity forms in front of a Notary Public.

Also included with this letter is a Paternity Affidavit. You must complete the affidavit. Please read the instructions following some of the questions carefully. Answer every question as directed. If you do not know the answer, write in "I don't know". You must sign the affidavit in front of a Notary Public.

Return the completed and signed Paternity Affidavit to the office named below within 20 days from the date of this letter. During the same 20 day period, you must also try to have the child's father sign the Admission of Paternity forms. If he signs, return the Admission forms along with your signed affidavit. If you do not return your affidavit and, if appropriate, his Admission of Paternity forms within 20 days from the date of this letter, we will recommend closure or reduction of your AFDC grant. If you do not receive AFDC, we will close our Non-AFDC case for non-cooperation. If you convince the father to sign the Admission of Paternity forms, we will then try to get a child support order. If we get a child support order, and you are receiving AFDC you will get the first \$50.00 of each month's current support that we collect. This money is in addition to your AFDC grant. We will send the full amount of current child support collected to you if you stop receiving AFDC, or if you are receiving Non-AFDC services.

If you have any questions concerning this matter, please contact the office named below.
Thank you for your cooperation.

Respectfully,

Child Support Enforcement Division

Encl.

CS602.1A
(9/90)

UNESTABLISHED PATERNITY**Initiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)**

TO: _____ DATE: _____

SUBJECT: Paternity of _____
Date of Birth: _____
Mother's Name: _____

The above-named mother claims you are the father of her child. This agency must determine if you are truly the child's father.

We sent Admission of Paternity forms to the child's mother, asking her to give them to you. If you know you are the father and wish to settle this matter to avoid legal action, please sign the forms. If you sign the forms, the CSED will establish you as the child's legal father. We can do this without the need for expensive and time-consuming legal action. If you know you are the father, please sign these forms in front of a Notary Public. Return them to the mother.

Contact the office named below immediately if you do not believe you are the father. We will schedule an appointment for you. At this appointment, you can explain why you think the child is not yours. If we do not hear from you, we must assume that the mother's information is correct. In that case, we will begin legal proceedings to find out if you are the natural father.

If you are not sure whether you are the child's father, you can resolve this matter without legal action. There are certain blood tests available which can positively exclude you as the father if you truly are not. If so, for the costs of a blood test, you may be able to avoid an expensive legal action. You may discuss blood testing with one of our caseworkers at any time. Even if you are unwilling to take blood tests, we will compel you to take such tests if a legal action is necessary.

If you are the father but are reluctant to sign the Admission forms because you are unsure about child support, contact this office. You can discuss your child support concerns with one of our caseworkers. In some cases, if you are cooperative, we may give up any claim for the past support of the child. We will base your obligation for current support on your ability to pay. If we do not hear from you and legal action becomes necessary, we can request current child support and past support.

We encourage and appreciate your cooperation in resolving this matter without legal action. Please contact this office if you have any questions or concerns, or if you want more information.

Regional Office Address:

Respectfully,

Child Support Enforcement Division

CS602.1B
(9/90)

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)**PATERNITY AFFIDAVIT**

MOTHER: _____

ALLEGED FATHER: _____

CHILD: _____

C.S. Case No: _____

This form is intended to gather basic information regarding the birth of your child and your relationship with the man alleged by you to be the child's father. Although the questions are sensitive, your answers will provide an opportunity for the CSED caseworker to determine whether your allegation of paternity can be legally proven. In answering the questions, please be as complete and frank as you can. Keep in mind that you are required to cooperate in establishing paternity of your child. Failure to cooperate will result in action against your AFDC grant and/or closure of your NAFDC case.

PART I

1. Did you contact the alleged father regarding his paternity of the child and did you request that he sign the Admission of Paternity forms? _____ YES _____ NO

If your answer is "YES", skip questions 2 and 3 and go directly to question 4 and proceed accordingly. If your answer is "NO", complete questions 2 and 3, then skip the remaining questions in this Part and go directly to Part II.

2. Please explain why you did not contact the alleged father:

3. Please explain how and when you made attempts to contact the alleged father:

4. What reason(s) did the alleged father give for refusing to sign the Admission of Paternity forms:

UNESTABLISHED PATERNITY

Initiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

5. Did the alleged father indicate that he could possibly be the child's father, but he was not entirely sure?
 YES NO If YES, please explain _____

PART II

1. Is there any man named on the child's birth certificate as the father? YES NO
 If YES, name the man _____
2. Has any court ever named any man as the child's father in a decree, judgment or order, including
 divorce decree? YES NO If YES, name the man _____
3. Has any man ever acknowledged paternity of the child in writing? YES NO
 If YES, name the man _____
4. Has any man ever taken the child into his home and held the child out as his child?
 YES NO If YES, name the man _____
5. Is any man obligated by any court or administrative order to provide support for the child?
 YES NO If YES, name the man _____
6. Were you married to any man when you became pregnant? YES NO
 If YES, name the man _____
7. Were you married to any man when the child was born? YES NO
 If YES, name the man _____
8. Was the child born within 10 months after a marriage or attempted marriage to any man?
 YES NO If YES, name the man _____
9. If you answered "YES" to any of the foregoing questions in this part--is the man named in your answer
 the same man as the alleged father? YES NO
 If "YES" skip all of the remaining questions in this form, sign the form on the last page, and return it
 as directed.
 If "NO" continue to answer all of the remaining questions in this form.
10. Did you become pregnant by artificial insemination? YES NO

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

PART III

1. When did you become pregnant? _____
2. When was the child born? _____
3. Where was the child born? _____
4. In what city and state did the act of sexual intercourse which caused you to become pregnant take place?

5. Was the child born premature, on time or overdue? _____
6. What was the child's weight at birth? _____
7. Does the child bear any physical resemblance to the alleged father? _____ YES _____ NO
If YES, how? _____

PART IV

1. Answer the following concerning the alleged father.

Full name _____ Date of Birth _____

Address (if unknown, list the last address known by you) _____

Social Security Number _____ Telephone No. _____

2. Does the alleged father have a Montana Driver's License? _____ YES _____ NO
3. If the alleged father resides out of state, did he previously live in Montana? _____ YES _____ NO
If YES, where and when _____

UNESTABLISHED PATERNITY**Initiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)**

4. If the alleged father resides out of state, does he provide any form of materials or services to be used by any person or business in Montana? _____ YES _____ NO If "YES", please explain in detail

5. What is the alleged father's usual occupation or trade? _____

6. Where is the alleged father employed? _____

7. If the alleged father is employed out of state, did he ever work in Montana? _____ YES _____ NO
If YES, where and when _____

8. If you do not know where the alleged father is now located, please provide any information which may help find him _____

* * * * *

PART V

1. When did you first meet the alleged father? _____
2. What was the nature of your relationship with the alleged father?
_____ casual dating _____ going to get married _____ officially engaged
_____ living together _____ other (please explain)

3. When did you first have sexual intercourse with the alleged father? _____
4. When was the last time you had sexual intercourse with the alleged father? _____
5. Did you or the alleged father use any preventive methods or contraceptives? _____ YES _____ NO
If YES, what _____

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

6. When was the date you became pregnant? _____
Please explain why you believe this date is correct _____

7. What's the name of the City, County, and State where the sexual intercourse which resulted in pregnancy occurred? _____

8. Within 45 days before the date you became pregnant, or within 45 days after you became pregnant, did you have sexual intercourse with any other man or men? _____ YES _____ NO
If YES, name the man or men _____

9. If you answered "YES" to question 8, do you have any reason to believe that the other man, or one of the other men, could not be the father? _____ YES _____ NO If YES, explain _____

10. Did you tell the alleged father that you were pregnant? _____ YES _____ NO
If YES, when _____
11. Did you tell the alleged father that he was the father of your child? _____ YES _____ NO
If YES, when _____
12. If your answers to questions 9 and 10 are "YES", what did the alleged father say? _____

13. If your answers to questions 9 and 10 are "YES", was any other person there at the time who could be a witness to the alleged father's reaction? _____ YES _____ NO If YES, name the person, or persons _____

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

14. If your answer to either question 9 or 10 is "NO", please explain why you did not tell the alleged father _____

15. Did the alleged father ever admit that he was the father of your child? _____ YES _____ NO
If YES, when and what did he say? _____

16. If your answer to question 14 is "YES", was any other person available to hear the alleged father admit he was the father? _____ YES _____ NO If YES, name the person or persons _____

17. After you became pregnant, or after the birth of the child, did the alleged father give you any money or other financial support? _____ YES _____ NO If YES, when and what amount _____

18. Did the alleged father pay any medical bills for your pregnancy or the birth of the child? _____ YES _____ NO If YES, when and what amount _____

19. Did the alleged father ever buy food, clothes or gifts for the baby? _____ YES _____ NO
If YES, when and what _____

20. Did the alleged father, prior to the birth of the child, suggest an abortion? _____ YES _____ NO
If YES, explain _____

21. Did the alleged father either during your pregnancy or after the birth of the child, ever offer to marry you? _____ YES _____ NO If YES, explain _____

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

22. Give the names of any persons who knew that you were dating or having a relationship with the alleged father at or near the time you became pregnant _____

23. Is there any other information concerning your relationship with the alleged father which would tend to prove that he is really the father of your child? _____ YES _____ NO If YES, please explain

24. Are you willing to take a polygraph, blood test and/or any other tests to prove your claim that the alleged father is really the father of your child? _____ YES _____ NO If NO, please explain

25. What is your present address and telephone number? _____

AFFIRMATION

I, the person whose signature appears below, first being duly sworn and under oath, hereby declare that my answers to the foregoing questions are correct and complete to the best of my knowledge and belief. In making this declaration, I understand any omission, misrepresentation, or falsification made by me will subject me to prosecution and penalties prescribed in MCA Section 45-7-201 (PERJURY) and MCA Section 45-7-202 (FALSE SWEARING).

DATED this _____ day of _____, 19 _____.

MOTHER'S SIGNATURE

ADDRESS

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19 _____.

(SEAL)

NOTARY PUBLIC FOR STATE OF MONTANA

Residing at _____

My Commission expires _____

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)

Date: _____

Vital Records & Statistics Bureau
Montana Department of Health
and Environmental Sciences
Cogswell Building, Room C-118
Helena, MT 59620

Subject: Request for Certified Copy of the
Acknowledgement of Paternity

Please forward a certified copy of the Acknowledgement of Paternity affidavit maintained in you records
for _____, born to _____
_____, the natural mother, on _____
_____ in _____, Montana.

This request is made under Montana Code Annotated Section 50-15-206. The information is needed
for the verification or establishment of paternity in the regular course of the Department of Social and
Rehabilitation Services child support enforcement duties.

Please send the certified copy to:

Thank you for your assistance in this matter.

Child Support Enforcement Division

CS602.1D
(Rev. 09/90)

UNESTABLISHED PATERNITYInitiation of Paternity Cases (AFDC, NAFDC,
and Automatic Continued Cases Only)**INSTRUCTIONS:**

Responsibility

Call Out Number

ACTION

FORM CS-602.1D, "REQUEST FOR CERTIFIED COPY OF THE
ACKNOWLEDGEMENT OF PATERNITY" - Used to request a certified
copy of the Acknowledgement of Paternity from the Vital Records and
Statistics Bureau.

.Caseworker/
Typist

1. Enter the date.
2. Enter the child's name.
3. Enter the mother's name.
4. Enter the date of birth.
5. Enter the place of birth.
6. Enter the regional office address.
7. Sign your name.

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

DATE: _____

TO: _____

FROM: _____

CASE NUMBER: _____

SUBJECT: Paternity of: _____
Date of Birth: _____
Father's Name: _____
Father's Address: _____

Federal law requires the Child Support Enforcement Division (CSED) to establish legal paternity for the child(ren) named above. Federal law also requires that you help us by truthfully identifying and locating the child(ren)'s father. If you do not, the Department may stop or reduce your AFDC grant. If you are not receiving AFDC, we may close our Non-AFDC case.

A Paternity Affidavit is enclosed. Complete, sign, and return it to the above address within twenty (20) days from the date of this letter. Read the instructions carefully and note the following:

- answer every question as directed;
- if you do not know the answer, write in "I don't know";
- sign the affidavit in front of a Notary Public.

If you do not return the Paternity Affidavit, we will recommend termination of your portion of your AFDC grant or may close our Non-AFDC case.

Two Admission of Paternity forms are also enclosed. Give them to the man you named as the child's father and ask him to sign them. You may ask him to sign in person, by telephone or by mail. Please note that the father must sign these Admission of Paternity forms in front of a Notary Public. If he signs, either you or he must return the Admission forms to the CSED at the above address.

If the alleged father signs the Admission of Paternity, the CSED will establish him as the child's legal father. If the child was born in Montana, we will ask the Vital Records and Statistics Bureau to enter the father's name on the birth certificate unless both parents send CSED an objection in writing.

Once paternity is established, the CSED will set a child support order. If you are receiving AFDC when the support order is entered, you will be paid the first \$50.00 of each month's current support collected from the father. This money is in addition to your AFDC grant. When you are no longer on AFDC, or if you are presently receiving Non-AFDC services, the full amount of the current child support payments will be sent to you.

If you have questions, contact the office listed above. Thank you for your cooperation.

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

DATE: _____

TO: _____

FROM: _____

CASE NUMBER: _____

CASE WORKER: _____

SUBJECT: Paternity of: _____
Date of Birth: _____
Mother's Name: _____

The above-named mother claims you are the father of her child(ren). The Child Support Enforcement Division (CSED) must determine if you are truly the child(ren)'s father.

We sent Admission of Paternity forms to the child(ren)'s mother, asking her to give them to you. If you know you are the father and wish to settle this matter without legal action, please sign the forms. If you sign them, the CSED will establish you as the child(ren)'s legal father. If we so establish, and the child was born in Montana, we will ask the Vital Records and Statistics Bureau to enter your name on the birth certificate unless both you and the mother send the CSED an objection in writing.

We can establish you as the child(ren)'s legal father without the need for expensive and time-consuming legal action. If you know you are the father, please sign these forms in front of a Notary Public. Return the completed Admission of Paternity to the mother or to the CSED at the above address.

Contact this office immediately if you do not believe you are the father. We will schedule an appointment for you. You can explain why you think the child(ren) is not yours. If we do not hear from you, we must assume that the mother's information is correct. In that case, we will begin legal proceedings to find out if you are the natural father.

If you are not sure whether you are the child(ren)'s father, you can resolve this matter without legal action. There are certain blood tests available which can positively exclude you as the father if you truly are not. For the costs of a blood test, you may be able to avoid expensive legal action. You may discuss blood testing with one of our caseworkers at any time. Even if you are unwilling to take blood tests, we can make you take such tests if legal action is necessary.

If you are the father but are reluctant to sign the Admission forms because you are unsure about child support, contact this office to discuss your concerns with a caseworker. If you are cooperative, we may give up our claim for past support of the child(ren). Your obligation for current support will be based on your ability to pay. If we do not hear from you and legal action becomes necessary, we can request current child support, past support, reimbursement of blood test costs and fees.

We encourage and appreciate your cooperation in resolving this matter without legal action. Contact the CSED if you have any questions or concerns, or if you want more information.

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

Chief
Vital Records and Statistics Bureau
Dept. of Health & Environmental Sciences
Cogswell Building
Helena, MT 59620

Date: _____

Case Number: _____

Case Worker: _____

INQUIRY REGARDING:

MOTHER'S FULL NAME: _____

MOTHER'S MAIDEN NAME: _____

CHILD'S FULL NAME: _____

DATE OF BIRTH: _____ PLACE OF BIRTH: _____

Town and County

☐ **Request for Certified Copies of Acknowledgement of Paternity, Certificate of Live Birth and Abstract of Certificate of Live Birth.** This request is made under MCA § 50-15-206 and 50-15-110. The information is needed for the verification or establishment of paternity in the regular course of the CSED's duties.

Please forward a certified copy of the following:

- ☐ Acknowledgement of Paternity
- ☐ Certificate of Live Birth
- ☐ Abstract of Certificate of Live Birth
- ☐ Other _____

Based on information provided, the CSED believes _____
has been identified as the father of this child. However, if any other man has
acknowledged paternity, please send this office a certified copy of that acknowledgement.

☐ **Request for Parents' Social Security Numbers.** For the purpose of child support enforcement, the CSED requests the social security numbers of the parents of the above named child. Please provide information from your records in the blanks below.

PARENTAL INFORMATION

Mother

Father

Full Name: _____

SSN: _____

Age: _____

Place of Birth: _____

Please send the completed form and any requested documents to the address provided above. If no documents are sent, please return form with explanation on back. Thank you for your assistance in this matter.

Date Received in Vital Records: _____ Date Returned to CSED: _____

☐ Social Security Number(s) Not Recorded. (If the child is less than 3 months old, the birth may not yet be recorded. You may resubmit your request when appropriate.)

☐ No documents available. See other side for explanation.

CS-602.1D
(Rev. 7/92)

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

TO: _____ DATE: _____
FROM: _____

CASE NUMBER: _____ CASE WORKER: _____
SUBJECT: Paternity of: _____
Date of Birth: _____
Mother's Name: _____

The above-named mother claims you are the father of her child(ren). The Child Support Enforcement Division (CSED) must determine if you are truly the child(ren)'s father. **There is a possibility that another man may be the child(ren)'s father.**

If you know you are the father and wish to settle this matter without legal action, please sign the enclosed Admission of Paternity forms and the Declaration of Informed Consent in front of a Notary Public. Return them to the CSED within ten (10) days. If you sign the forms, the CSED will establish you as the child(ren)'s legal father. If we so establish, and the child was born in Montana, we will ask the Vital Records and Statistics Bureau to enter your name on the birth certificate unless both you and the mother send the CSED an objection in writing.

We can establish you as the child(ren)'s legal father without the need for expensive and time-consuming legal action. If you know you are the father, please sign and return the completed forms to the CSED at the above address.

Contact this office immediately if you do not believe you are the father. We will schedule an appointment for you. You can explain why you think the child(ren) is not yours. If we do not hear from you, we must assume that the mother's information is correct. In that case, we will begin legal proceedings to find out if you are the natural father.

If you are not sure whether you are the child(ren)'s father, you can resolve this matter without legal action. There are certain blood tests available which can positively exclude you as the father if you truly are not. For the costs of a blood test, you may be able to avoid expensive legal action. You may discuss blood testing with one of our caseworkers at any time. Even if you are unwilling to take blood tests, we can make you take such tests if legal action is necessary.

If you are the father but are reluctant to sign the Admission forms because you are unsure about child support, contact this office to discuss your concerns with a caseworker. If you are cooperative, we may give up our claim for past support of the child(ren). Your obligation for current support will be based on your ability to pay. If we do not hear from you and legal action becomes necessary, we can request current child support, past support, reimbursement of blood test costs and fees.

We encourage and appreciate your cooperation in resolving this matter without legal action. Contact the CSED if you have any questions or concerns, or if you want more information.

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

TO: _____ DATE: _____

FROM: _____

CASE NUMBER: _____ CASE WORKER: _____
SUBJECT: Paternity of: _____
Date of Birth: _____
Mother's Name: _____

You have been named as the father of the child(ren) named above. The Child Support Enforcement Division (CSED) must determine if you are truly the child(ren)'s father.

Enclosed are Admission of Paternity forms. Please complete and return these forms within ten (10) days if you know you are the father of this child(ren). If you sign the forms, the Child Support Enforcement Division will establish you as the child(ren)'s legal father. If we so establish, and the child was born in Montana, we will ask the Vital Records and Statistics Bureau to enter your name on the birth certificate unless both you and the mother send the CSED an objection in writing.

We can establish you as the child(ren)'s legal father without the need for expensive and time-consuming legal action. If you know you are the father, please sign these forms in front of a Notary Public. Return the completed Admission of Paternity to the CSED at the above address.

Contact this office immediately if you do not believe you are the father. We will schedule an appointment for you. You can explain why you think the child(ren) is not yours. If we do not hear from you, we must assume that the mother's information is correct. In that case, we will begin legal proceedings to find out if you are the natural father.

If you are not sure whether you are the child(ren)'s father, you can resolve this matter without legal action. There are certain blood tests available which can positively exclude you as the father if you truly are not. For the costs of a blood test, you may be able to avoid expensive legal action. You may discuss blood testing with one of our caseworkers at any time. Even if you are unwilling to take blood tests, we can make you take such tests if legal action is necessary.

If you are the father but are reluctant to sign the Admission forms because you are unsure about child support, contact this office to discuss your concerns with a caseworker. If you are cooperative, we may give up our claim for past support of the child(ren). Your obligation for current support will be based on your ability to pay. If we do not hear from you and legal action becomes necessary, we can request current child support, past support, reimbursement of blood test costs and fees.

We encourage and appreciate your cooperation in resolving this matter without legal action. Contact the CSED if you any have questions or concerns, or if you want more information.

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

TO: _____ DATE: _____
FROM: _____

CASE NUMBER: _____ CASE WORKER: _____

SUBJECT: Paternity of: _____
Date of Birth: _____
Mother's Name: _____

You have been named as the father of the child(ren) named above. The Child Support Enforcement Division (CSED) must determine if you are truly the child(ren)'s father. **There is a possibility that another man may be the child(ren)'s father.**

If you know you are the father and wish to settle this matter without legal action, please sign the enclosed Admission of Paternity forms and the Declaration of Informed Consent in front of a Notary Public. Return them to the CSED within ten (10) days. If you sign the forms, the CSED will establish you as the child(ren)'s legal father. If we so establish, and the child was born in Montana, we will ask the Vital Records and Statistics Bureau to enter your name on the birth certificate unless both you and the mother send the CSED an objection in writing.

We can establish you as the child(ren)'s legal father without the need for expensive and time-consuming legal action. If you know you are the father, please sign these forms in front of a Notary Public. Return the completed Admission of Paternity to the CSED at the above address.

Contact this office immediately if you do not believe you are the father. We will schedule an appointment for you. You can explain why you think the child(ren) is not yours. If we do not hear from you, we must assume that the mother's information is correct. In that case, we will begin legal proceedings to find out if you are the natural father.

If you are not sure whether you are the child(ren)'s father, you can resolve this matter without legal action. There are certain blood tests available which can positively exclude you as the father if you truly are not. For the costs of a blood test, you may be able to avoid expensive legal action. You may discuss blood testing with one of our caseworkers at any time. Even if you are unwilling to take blood tests, we can make you take such tests if legal action is necessary.

If you are the father but are reluctant to sign the Admission forms because you are unsure about child support, contact this office to discuss your concerns with a caseworker. If you are cooperative, we may give up our claim for past support of the child(ren). Your obligation for current support will be based on your ability to pay. If we do not hear from you and legal action becomes necessary, we can request current child support, past support, reimbursement of blood test costs and fees.

We encourage and appreciate your cooperation in resolving this matter without legal action. Contact the CSED if you any have questions or concerns, or if you want more information.

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Case Initiation--Third-Party
Obligee

SUPERSEDES: CS 602.2, Case Initiation--Third-Party Obligee, September 30, 1995.

REFERENCES: Sections 40-5-231 through 40-5-237, 40-6-110 through 40-6-118, and 50-15-210, MCA.

POLICY: Applicability. The case initiation procedures in this section apply only when (1) the case meets the conditions for a "paternity case" given in section CS 602.1, Case Initiation--Mother Obligee, and (2) the obligee is not the natural mother of the child, but a third-party custodian. The third-party custodian (the obligee) may be either a custodial relative or a state agency providing foster care or adjudicated delinquent services. (Guidance on processing third-party obligee **contested cases** is provided at the end of this POLICY; specific procedures, except as noted, are the same as those in section 605.2.)

Processing Third-Party Obligee Cases. Generally, the specific PROCEDURES for initiating third-party obligee cases are the same as for "mother-obligee" cases. These procedures are given in section CS 602.1 and, unless otherwise specified, apply here as well. Likewise, the general POLICY statements in section CS 602.1 on multiple allegations, presumption, exclusion, period of conception, location, "unknown" allegations, jurisdiction, time frames, birth records, and pre-service contact of the alleged/presumed father also apply. The purpose of this section is to outline the special parameters for working with both the third-party obligee and (when possible) the natural mother to obtain information necessary to resolve paternity or establish reasonable cause for a paternity action.

Differences from Mother-Obligee Processing. There are six main differences between mother-obligee and third-party obligee case processing:

- (1) Incentives for natural mother's cooperation. Because the natural mother will not receive child support payments upon establishment of paternity

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Obligee

and a support order, and is not currently receiving public assistance benefits related to the child that could be terminated, there may be little incentive for her to cooperate in providing essential information or in submitting to genetic testing; the CSED may need to subpoena the mother's cooperation in applicable situations.

- (2) Obtaining evidence of reasonable cause. Where reasonable cause is required to proceed with the case, and the CSED cannot obtain the natural mother's sworn statement (Paternity Affidavit) claiming the alleged/presumed father is the natural father, the CSED must investigate other possible sources for evidence of reasonable cause (see Reasonable Cause Determinations on following page).

Reasonable cause is required for the CSED to take any of the following actions:

- (1) Enter a Paternity Consent Order prior to service of notice
- (2) Enter a Paternity Default Order prior to service of notice (for default on a Consent to Genetic Testing)
- (3) Issue a Notice of Parental Responsibility (NPR), and enter any subsequent orders based on the notice.

Note that for the Paternity Consent Order in (1) the CSED will have reasonable cause based on the Admission of Paternity and Application for Paternity Consent Order even without a Paternity Affidavit, **but for the Paternity Default Order in (2), reasonable cause without a Paternity Affidavit cannot be assumed.**

- (3) Scheduling Genetic Testing. Because the child does not live with the natural mother, the caseworker must arrange with the obligee for the appearance of the child, and (separately) with the mother for her own appearance, at drawings for genetic testing.
- (4) Genetic Testing Without Mother's Tissue Sample. If

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the CSED cannot obtain the mother's tissue sample, it is still possible to proceed with genetic testing using only the child's and the alleged/presumed father's samples. With sufficient testing the CSED's contracted testing laboratory can arrive at a result where the alleged/presumed father is either excluded, or included with a high probability of paternity.

- (5) Disclosing Results of Genetic Testing. The CSED may not send copies of actual genetic testing results to the obligee, because of legal restrictions concerning confidentiality.
- (6) Interstate Referrals. In outgoing interstate cases where the CSED cannot obtain a Paternity Affidavit from the natural mother, it **must** proceed with the referral if there is other evidence of reasonable cause, and **may** (generally will) proceed even without it.

Reasonable Cause Determinations. Montana statute gives only two examples of acceptable evidence of reasonable cause--the mother's sworn statement, and a presumption. But, the law includes "any other reasonable cause to believe that the alleged father is the child's natural father" as an acceptable basis for a paternity action. "Reasonable cause" is defined as the knowledge of facts, actual or apparent, which is strong enough to justify a reasonable or prudent person in a particular belief. Reasonable cause must be supported by sufficient underlying facts and circumstances for the trier of fact to determine the validity of the belief.

Reasonable cause to believe a man may be the natural father of the child **may** exist when the man voluntarily pays child support, visits with the child, tells others that the child is his, buys or pays for other necessities, or otherwise performs acts or makes statements consistent with what a natural father would do under the same circumstances. **Consult the CSED staff attorney to determine if reasonable cause exists in the**

section:
Establishing Paternity

subject:
Case Initiation--Third-Party
Obligee

absence of a Paternity Affidavit or presumption.

Differences from Mother-Obligee Processing--Contested Cases. If case initiation procedures do not resolve paternity and there is reasonable cause to proceed with the "contested case" in a third-party obligee situation, the procedures in section CS 605.2 will apply, except as follows:

- (1) Genetic testing--the special genetic testing procedures described in this section will apply to third-party obligee contested cases as well.
- (2) Status of the obligee in the case--in third-party obligee contested cases
 - both the obligee and the mother have the right to receive copies of all proposed hearing exhibits, including the Notice of Parental Responsibility;
 - only the mother or the father (not the obligee) may request a change in the child's birth certificate upon entry of a CSED paternity order;
 - both the mother and the obligee may request an order of nonpaternity if applicable; and
 - the CSED will not require financial information from the obligee, upon combined service of the NPR-NOCS on the alleged/presumed father.

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closure procedures.

8. If paternity interview with obligee indicates mother may be willing to complete Paternity Affidavit, prepares and sends (directly or through obligee) mother's paternity packet containing
 - Form CS-602.1A, Letter to Mother
 - Form CS-602.1C, Paternity Affidavit
 - (if applicable) Form CS-408.3C, Long Arm Jurisdiction Questionnaire.Monitors for return of Paternity Affidavit; if Affidavit not timely returned proceeds with investigative subpoena as in step 9.
9. If paternity interview with obligee indicates mother will not cooperate in completing Paternity Affidavit, follows procedures in section CS 405.12, Investigative Subpoena, to compel mother to complete and submit Affidavit. If subpoena is not possible (mother is dead or is not located), proceeds to step 11.
10. Reviews returned Affidavit for completeness and proceeds as in section 602.1 to obtain additional information from mother if necessary. If mother refuses to provide required additional information (including names of other possible fathers if original returned Affidavit has ruled out alleged father in single-allegation case), consults with CSED legal staff concerning feasibility of investigative subpoena.

If necessary, recontacts obligee for additional information.

If returned Affidavit provides presumption, proceeds as in step 6.
11. If alleged/presumed father returns signed Admission of Paternity and Application for Paternity Consent Order (single-allegation cases only), proceeds as in section CS 602.1.

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Establishing Paternity

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Case Initiation--Third-Party
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12. If alleged/presumed father returns signed Consent to Genetic Testing, or contacts CSED and discusses or agrees to voluntary genetic testing, proceeds as in section CS 602.1 **except as follows (for any that apply):**
- a. If alleged/presumed father agrees to genetic testing, attempts to schedule drawing appointment for mother. If mother located but not willing to cooperate, consults CSED staff attorney and obtains Genetic Testing Subpoena to compel her participation as in section CS 605.2.
 - i. If mother participates (voluntarily or in response to subpoena), schedules **separate** drawing appointments for alleged/presumed father, mother, and (through obligee) child.
 - ii. If mother does not participate (she is dead, not located, or otherwise not accessible by subpoena), contacts CSED's contracted testing laboratory to discuss any special requirements for testing where only one parent's tissue sample is available. Proceeds to schedule drawing appointments for alleged/presumed father and (through obligee) child, following any special instructions received from laboratory.
 - b. If alleged/presumed father returns signed Consent to Genetic Testing but then fails to appear for scheduled drawing (single-allegation cases only), **determines whether there is reasonable cause to believe man may be natural father of child.**
 - i. If so, follows procedures in section CS 606.1, Paternity Default Order, providing evidence of reasonable cause with application package to OALJ.
 - ii. If not, proceeds to step 13.

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Case Initiation--Third-Party
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- c. Upon receipt of positive genetic testing results, sends letter to **obligee** explaining consequences of positive results; does not send copy of actual results of genetic testing to obligee. Sends copy of genetic testing results to **mother** for her information.
- d. Upon receipt of negative genetic testing results, sends letter to **obligee** explaining consequences of negative results; does not send copy of actual results of genetic testing to obligee. Sends copy of genetic testing results to **mother** for her information. In single-allegation case also includes in letter to mother, obligee, or both, request for assistance in identifying other allegations.
- e. If requested by mother, obligee, excluded man, or another state, prepares and sends to OALJ form CS-604.1A, Order of Nonpaternity, as in CS 602.1.

IF PATERNITY NOT RESOLVED AT THIS POINT, AND ALLEGED/PRESUMED FATHER HAS NOT AGREED TO TESTING, PROCEEDS TO STEP 13.

- 13. Following procedures in CS 602.1, determines whether CSED has or can obtain jurisdiction to proceed with contested case. If so, proceeds to step 14. If not, refers case to other state, or sends Waiver of Jurisdiction, or both, as in CS 602.1.
- 14. Determines whether there is reasonable cause to believe alleged/presumed father is child's natural father, based on paternity interview, returned Paternity Affidavit, or any other facts of case known at this time. (See Reasonable Cause Determinations, POLICY, for guidance in cases where Paternity Affidavit is not available.)

- a. If reasonable cause exists, proceeds to

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section CS 605.2 and follows procedures for establishing paternity in contested case. If genetic testing applies, also follows procedures in step 12a, this section.

- b. If reasonable cause cannot be shown
- for **this** man, continues to monitor or search for information leading to reasonable cause for him, and proceeds (or continues) with other allegations in case as in 602.1.
 - for **any** allegation,
 - > in non-public assistance case, initiates case closure procedures.
 - > in public assistance case, maintains open case, pending receipt of new information; periodically contacts obligee regarding reasonable-cause information.

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Paternity Interview Outline

SUPERSEDES: CS 602.4, Paternity Interview Outline, September 30, 1995.

REFERENCES: Sections 40-5-232 and 40-5-233, MCA.

POLICY: Purpose and Format of Paternity Interview. The main purpose of the paternity interview is to obtain information that will help the CSED resolve paternity in the case, or determine whether resolution is likely. Facts gathered at the interview may be used to take the next step in the case or to establish reasonable cause. A secondary purpose is to enlist the cooperation of one of the participants in the case. A paternity interview may be conducted by telephone or in person and may be scheduled or impromptu; the interview may occur at any time during the paternity establishment process, but generally is most useful during case initiation; the interviewee may be the mother, the third-party obligee, or the alleged or presumed father.

The paternity interview is optional, and is conducted by the caseworker or, in certain types of cases, by the CSED public assistance liaison. The caseworker determines whether an interview is necessary by considering the facts of the case, and assessing the need for further information or improved cooperation from a participant. The following paragraphs give the most common considerations in electing to interview a participant; there are, however, many exceptions, and regional variations also apply.

Interview with Mother. Most paternity interviews are with the mother, since she is the person most likely to have any information still lacking, and (when she is the obligee) most likely to be willing to attend an interview. Specifically, the CSED may seek an interview with the mother (1) to address some apparent discrepancy or gap in the information provided in the Paternity Affidavit, (2) to obtain another allegation in the case, if a single or last remaining allegation has been excluded, or (3) if she is not the obligee, to persuade her to cooperate in the paternity establishment process.

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Generally a paternity interview with the mother is held in person, and scheduled ahead of time; telephone interviews for short questions or with out-of-state mothers are also common.

Interview with Third-Party Obligee. In third-party obligee cases a paternity interview with the custodial relative or social worker is standard practice, because of the many possible fact situations. The interview may be omitted, however, if all the necessary information can be obtained from the application or referral, or from the mother. Logistics (scheduling; telephone versus in-person) depend on the obligee's and interviewer's needs.

Interview with Alleged/Presumed Father. Except for short telephone conversations as opportunities arise, paternity interviews with the alleged/presumed father are not common. Depending on the facts of the case the caseworker may seek an interview with the alleged/presumed father to gain his cooperation in some specific area (for example, to obtain his consent to genetic testing in a multiple-allegation case). The interview is by telephone unless the alleged/presumed father requests an in-person meeting.

Interview by CSED Public Assistance Liaison. In certain cases the CSED public assistance liaison may be in a better position than the caseworker to pursue and obtain paternity-related information. In these situations the caseworker contacts the liaison for assistance in developing the case facts. Generally, these cases involve allegations against "unknown" men, or against men not named in the public assistance referral; however, liaisons may also be asked to conduct interviews in cases where the mother or custodian is not available for an interview with the caseworker (because of geographical limitations, for example). Use of the liaison in other situations may also be appropriate, depending on case facts and regional policy. Usually, the main advantages of involving the liaison in a paternity case are that he or she can be available at locations remote from the regional office (county public assistance offices, for example), and can devote time and resources to

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specialized in-depth interviews and follow-up investigations at the local level.

PROCEDURES:

The following procedures are intended to help the caseworker (or liaison) focus the interview by outlining subject areas that may be pertinent to the case. The lists provided are not mandatory checklists, nor are they exhaustive. The interviewer must determine the content of each interview according to the needs and the facts of the case.

RESPONSIBILITY

ACTION

NOTE: In steps 1 through 3, the word "you" refers to the person being interviewed.

Caseworker
or Liaison

1. As needed, schedules and conducts in-person paternity interview with mother (see POLICY for when telephone interview applies). Thoroughly documents conversation for file, and gives mother opportunity to ask questions.
 - a. Explains paternity establishment process, specifically,
 - Why the CSED is involved
 - The benefits of establishing paternity
 - The possibility of genetic testing, and what is involved
 - You may be called on to testify in court
 - The CSED attorney does not represent you; you may obtain an attorney of your own if you desire
 - Why we need your cooperation in the paternity establishment process
 - Why we need detailed information about your relationship with the alleged father, and the exact dates of the relationship
 - b. Obtains information regarding pregnancy, birth

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of child, and mother's relationship with alleged or presumed father; **explains that the term "intercourse" means any act that could have resulted in the conception of the child; specifically,**

- Where and when you and he met (specifics)
- Did you and he date? Where did you go? How old were you both? Who were you with when you were together? Did your parents or his parents know about the relationship? Did the alleged father come to your home? Names and addresses of friends or relatives that knew about your relationship.
- When and where did you first have intercourse? Why do you remember? Exact date or approximate? Describe circumstances, use of birth control.
- How often did you have intercourse? Where did it occur? Identity of hotels or motels, details of occupancy, manner of registration; dates. Did you live together? Where and how long?
- Did anyone else know you and he were having intercourse? Could anyone else infer intercourse, or know you spent the night with him? Names, addresses, how they knew.
- What was the date of your last period before pregnancy? Is this an exact date or a guess? How do you remember?
- What was the date of conception? Is this an exact date or a guess? How do you remember?
- Did you have intercourse with anyone else, other than the alleged father, during the period of conception? One night stands? Do you think the father will allege you had intercourse with someone else? If so, give details.
- How and when did you discover you were pregnant? When did you tell the alleged father? What was his response (exact

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- words, as specific as possible). Was anyone else present? Names and addresses. Did you date the alleged father after you were pregnant? Did the alleged father admit or deny he was the father to anyone else? Names and addresses. Did you have intercourse after becoming pregnant? Name of doctor you saw during pregnancy. Did you tell the alleged father's parents? When, where, what did they say?
- Where was the baby delivered? What was the baby's weight at birth? anticipated due date? actual birth date? Did the alleged father visit you in the hospital? How many times? How long did he stay? What did he say (be specific)? Was anyone else there? Names and addresses. Were there any gifts from him or his parents? Describe.
 - After you left the hospital, when was the next time you saw the alleged father? Describe what happened. Did you and he date? Has he seen or visited the baby? What has been his reaction? Has he sent any gifts or money? Are there any witnesses to the gifts or money? Names and addresses.
 - Does the child resemble the alleged father? How? Compare physical characteristics, color of eyes, hair, anything that might be genetically transferred to the child.
 - When was the last time you saw the alleged father? Where, when, what was said?
 - Is there anything else that might have happened or may be pertinent?

- c. Reviews Paternity Affidavit and asks for any information not completed initially or obtained in interview; if necessary, asks mother to complete and sign new Affidavit, or

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statement supplementing existing Affidavit, and has Affidavit or statement notarized. (Most additional information will not require formal change to Affidavit, but will simply clarify points for caseworker's use.)

- d. Asks for any further information regarding alleged father's employment, financial condition, address and phone number, and any other useful information regarding his ability to pay support.
- e. Obtains from mother or requests she produce following documents:
 - Medical release so information can be acquired from the hospital or doctor
 - Any photos showing the child and alleged father together
 - Letters or written documents containing statements by the alleged father possibly supporting this claim of paternity
 - Descriptions of gifts and other non-monetary benefits supplied or provided by the alleged father
 - Financial data to establish the child's need for support and the mother's ability or lack of ability to provide her share of the child's needs
 - Copies of the child's birth records
 - Any other item that may be useful in proving paternity or the need for support

- Caseworker 2. As needed, conducts interview with alleged or presumed father; thoroughly documents conversation for file, specifically noting any statements that may be used as evidence at hearing (see section CS 602.5); and gives alleged/presumed father opportunity to ask questions. (NOTE: Partial interviews focusing on specific points may be appropriate.)
- a. Before beginning discussion, obtains personal

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- data for file: full name, address, telephone number, social security number, date of birth.
- b. Explains paternity allegation and paternity establishment process, specifically,
- The benefits of establishing paternity, and why he should cooperate
 - Possible court actions and costs
 - The possibility the CSED will compel genetic testing, and what is involved
 - The alternatives to court action

NOTE: Genetic Testing Only Reason for Hearing. An essential point to make with the alleged/presumed father is that the hearing is not for the purpose of declaring paternity, but solely for determining whether genetic testing should be ordered. The hearing officer will order testing if there is any reasonable probability of sexual intercourse during the period of conception.

- c. Discusses case against him, especially relating to basis for notice, hearing, and order to submit to testing; notes any refuting comments. Specifically (any that apply),
- i. The mother has signed a Paternity Affidavit claiming he is the natural father of the child; by law this allows the CSED to
 - serve a Notice of Parental Responsibility initiating a paternity action ("reasonable cause," section 40-5-232, MCA)
 - order genetic testing when the Affidavit is presented at hearing ("reasonable probability of sexual intercourse," section 40-5-233, MCA)
 - ii. The CSED has or can get proof of actions or statements by him that, by law, will allow the CSED to serve notice and order testing as in step 2c(i).
 - iii. There is a legal presumption of paternity that, by law, will allow the CSED to

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serve notice and order testing as in step 2c(i).

- d. If applicable (caseworker's discretion), asks for any information that would affect the case against him, for example,
- During the probable period of conception [give dates], did you have any medical condition--physical or mental, temporary or permanent--that made it impossible to father children? If so, give condition, dates, and names and addresses of medical practitioners and others who can confirm.
 - Were you out of the local area, or restricted in your movements, during the entire probable period of conception [give dates]? What was the situation? Give names and addresses of persons or institutions who can verify.
 - Names and addresses of any other persons who have knowledge of any facts that may help prove you are not the father.
- e. If applicable (caseworker's discretion), asks for any information about other possible fathers' existence or identities, for example,
- > Do you have any knowledge, direct or indirect, of the mother's sexual intercourse with other men during the probable time of conception? Give names and addresses.
- f. In single-allegation case, if alleged father willing to admit paternity, requests he sign Admission of Paternity form and proceeds as in section CS 606.2.
- g. If alleged/presumed father denies paternity and proves he could not be child's father, dismisses any Notice of Parental Responsibility and any Notice of Financial Responsibility (see section CS 605.2 for dismissal procedures and proof required).

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Caseworker
or Liaison

- h. If alleged father does not sign Admission or prove he could not be father, attempts to negotiate genetic testing as in section CS 604.1, and proceeds as directed.
 - i. Before ending interview, attempts to obtain any information needed for possible support order establishment and enforcement (employment, income, assets, etc.).
3. As needed, schedules and conducts paternity interview, in person or by telephone, with third-party obligee (custodial relative, social worker, or other appropriate person); thoroughly documents conversation for file, and gives obligee opportunity to ask questions.
- a. If necessary, explains paternity establishment process, as in step 1a.
 - b. Obtains any information known to obligee--and not yet obtained from mother--regarding mother's pregnancy, birth of child, or mother's relationship with alleged or presumed father as in step 1b.
 - c. Reviews Paternity Affidavit form and asks for any information not yet received; particularly questions obligee about possible existence of presumption (see section CS 602.1 for definition of presumption).
 - d. If mother's Paternity Affidavit does not provide basis for reasonable cause (Affidavit not available, or information insufficient), specifically questions obligee for relevant information (see section CS 602.2 for further discussion of reasonable cause).
 - e. If applicable, questions obligee regarding possible cooperation of mother in paternity establishment process.

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- f. If no allegations available from mother, or if there is reason to believe mother's information is not complete, questions obligee regarding existence of other possible fathers.
- g. Asks for any further information regarding alleged father as in step 1d.
- h. Obtains, or requests assistance in obtaining, documents listed in step 1e.

Department of Social and
Rehabilitation Services

Section:

UNESTABLISHED PATERNITY

Subject:

Admissions of Paternity

CHILD SUPPORT ENFORCEMENT**INTRODUCTION:**

In any contact with the mother or the alleged father, the CSED caseworker should be aware of the possibility of admissions. Admissions are oral or written statements which tend to indicate, explicitly or inferentially, that the alleged father is in fact the father. Certain conduct by the alleged father may also amount to such an admission. For example, if he acts like a father then his acts may be an admission that he is the father.

Whenever an admission occurs, the CSED caseworker should document it to the greatest degree possible. Get names and addresses of witnesses to oral admissions, acquire originals, if possible, of written admissions, and describe with particularity any conduct which may amount to an admission including names and addresses of any witnesses to such conduct.

A partial list of the more likely admissions is as follows:

- a. promises to pay support;
- b. visits to mother while in hospital;
- c. suggestion or offer to pay for abortion;
- d. paying expenses or just giving money;
- e. takes mother to or from hospital, clinic, doctors office;
- f. signing the birth certificate;
- g. continued intercourse after informed he is the father;
- h. buys baby food, clothes, diapers, other items;
- i. gives gifts to child (birthday, Christmas);
- j. pays medical or hospital bills;
- k. being photographed with child;
- l. taking photographs of child;
- m. requesting photograph of child from mother;
- n. correspondence, love letters, birthday cards, etc., admitting or inferring paternity;
- o. visits to child, holding child, playing with child;
- p. referring to child as his, e.g., "my son"

Department of Public Health and Human Services CHILD SUPPORT ENFORCEMENT	section: ESTABLISHING PATERNITY
	subject: Evidence at Hearing

SUPERSEDES: CS 602.5, Admissions of Paternity, September 1990.

REFERENCES: Sections 40-5-233 and 40-6-105, MCA.

POLICY: Role of Evidence in Paternity Case. If paternity cannot be established informally and the case is set for hearing under section CS 605.2, the CSED will be required to produce "testimony and any other supplementary evidence" demonstrating (1) a reasonable probability the alleged or presumed father had sexual intercourse with the child's mother during the probable period of conception, or (2) in multiple-allegation cases only, a probable existence of a presumption. If this evidence is satisfactory, the hearing officer will order genetic testing, and the CSED can proceed on the basis of the testing results to resolve paternity for the alleged or presumed father in question.

Preparing Evidence for Hearing. Generally the CSED depends on the mother's Paternity Affidavit, supported by live testimony from the mother, for evidence of the probability or presumption required. If there is any chance the alleged/presumed father will claim the mother's Paternity Affidavit is false, the CSED must be prepared to present documents or testimony corroborating the mother's sworn statements, refuting the alleged/presumed father's counter-claims, or giving additional evidence of a presumption or the probability of sexual intercourse.

Generally the areas contested or raised at hearing--and in which evidence may be needed--are as follows:

- (1) The probable period of conception (evidence would include the date of birth of the child and whether the birth was late, premature, or on time); the place of conception
- (2) The physical possibility/impossibility of the alleged father's having fathered the child (medical, geographical)
- (3) The child's resemblance to the alleged/presumed father

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- (4) The relationship of the mother with the alleged/presumed father during the probable period of conception
- (5) (multiple-allegation cases only) The existence of a legal presumption
- (6) Any actions or statements of the alleged/presumed father indicating he believes he is or may be the natural father.

If it appears further information may be needed or helpful in any of these areas to corroborate the evidence of the mother, the CSED investigates possible sources and arranges for presentation at hearing--through testimony or documents--of any evidence discovered.

Actions or Statements of Alleged/Presumed Father. Certain actions or statements by the alleged/presumed father--sometimes called "admissions"--when offered as evidence by the CSED, can help to support the claim he could be the natural father of the child. Some of the more likely statements and actions of this nature are as follows:

- (1) Promises to pay support
- (2) Visits to mother while in hospital
- (3) Suggestions of, offer to pay for abortion
- (4) Payment of expenses, gifts of money
- (5) Providing transportation to or from hospital, clinic, doctor
- (6) Buying baby food, clothes, diapers, etc.
- (7) Gifts to child--birthday, Christmas, other
- (8) Payment of medical or hospital bills
- (9) Being photographed with child
- (10) Taking photographs of child
- (11) Requesting photograph of child from mother
- (12) Writings (correspondence, love letters, birthday cards, etc.) admitting or inferring paternity
- (13) Visits to child, holding or playing with child
- (14) Referring to child as his ("my son").

NOTE: Omissions by Alleged/Presumed Father. If an alleged/presumed father makes no comment, or does not deny paternity, when a remark is made in conversation stating or implying the child is his ("your baby," "your

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little boy/girl"), this "omission" may be used in evidence in the same way as a positive statement or action claiming paternity.

Testimony of Witnesses. A witness may be any person having direct knowledge relating to an area to be raised at hearing. Depending on the issue, a witness may be a friend, relative, neighbor, acquaintance, classmate, or coworker of the mother or alleged/presumed father; a person connected to the issue in a professional capacity (doctor, local registrar); or a person not connected to anyone in the case who happened to be in a position to witness an event or situation relating to the paternity at issue. Important witnesses are often those who can testify to facts about the relationship or to statements or actions of the alleged/presumed father indicating paternity. In certain situations, even the impressions of a witness as to the type of relationship that existed, or the meaning of a particular statement at the time it was made, may be accepted as evidence.

Documents in Evidence. Documents commonly used in evidence of paternity are photographs (showing a father-child resemblance, or showing the man and child together); letters written by the alleged/presumed father; the mother's personal calendar showing menstrual cycle dates; sworn statements of persons who witnessed relevant events; and official documents from doctors, hospitals, institutions, or employers relating to the child's birth, the alleged/presumed father's whereabouts at the time of conception, or his medical condition.

PROCEDURES:

RESPONSIBILITY	ACTION
Caseworker	1. At any time after receiving paternity case and before representing CSED at hearing on genetic testing, documents any statements made by alleged/presumed father indicating he may be natural father.

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subject:
Evidence at Hearing

CSED Customer
Service Repre-
sentative

2. Upon receiving telephone call from man identifiable as participant in CSED paternity case, documents any statements made by him indicating he may be natural father of child (see Actions or Statements, POLICY).

Caseworker

3. Upon receiving notice of hearing in paternity case, reviews file for strength of evidence in all relevant areas. If it appears further evidence may be needed to establish reasonable probability of sexual intercourse (or to establish presumption, in multiple-allegation case), takes action as follows:
 - a. Identifies and contacts possible witnesses and, if suitable evidence discovered, arranges for testimony at hearing. Testimony may be live or by deposition.
 - b. Identifies possible sources of relevant documents and, if suitable evidence discovered, arranges for production of documents at hearing.(See section CS 605.2 for use of subpoenas, discovery deadlines, etc.)
4. Consults with CSED staff attorney on any questions concerning use of evidence at hearing, especially on issues of corroboration of testimony and strength of evidence.

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Genetic Testing

SUPERSEDES: CS 604.1, Genetic Testing, September 30, 1995

REFERENCES: Sections 40-5-232 through 40-5-235, MCA.

POLICY: Purpose and Applicability. The procedures in this section apply when negotiation or scheduling of genetic testing is indicated during initiation of the paternity case (section CS 602.1) or subsequent to notice of parental responsibility (section CS 605.2).

Negotiations with Alleged/Presumed Father. In many cases, before genetic testing is ordered via Genetic Testing Subpoena, the caseworker will have an opportunity to discuss the advantages of voluntary testing with the alleged/presumed father. These discussions may occur before or after the CSED issues the Notice of Parental Responsibility, and are **extremely important in expediting the case**. Procedures in this section cover negotiation of the three main testing issues--participation, written agreement, and cost recovery--and give the major negotiating points caseworkers may use to obtain cooperation.

CSED Contracted Testing Laboratory. The CSED contracts with a national testing laboratory for genetic testing services; this laboratory in turn arranges with a number of Montana facilities to perform the actual blood drawing or tissue sampling, and to identify, package, and mail the samples to the laboratory for testing. The laboratory will also arrange for drawing/sampling at out-of-state facilities, as needed. The laboratory provides the CSED with a list of drawing/sampling sites in Montana, and a standard "chain of custody" sheet to be submitted to the facility to confirm and document the appointment. Samples must be taken on a Monday, Tuesday, or Wednesday to allow for delivery by mail to the laboratory within 24 hours. Copies of both the site list and the chain of custody sheet are included at the end of this section.

Recovery of Testing Fees. Except in unusual situations (see PROCEDURES, this section) the CSED initially pays the contracted laboratory for the costs of genetic testing, then seeks reimbursement

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PATERNITY**

subject: Genetic Testing

from the man found to be the father. (If a man is excluded by genetic testing, he is not liable for testing charges.) When positive results are received for one of the men tested in the case, the CSED requires that man to pay the testing costs incurred for the mother, the child(ren), and himself. The CSED can, in its discretion, waive recovery of testing fees. Fees may be waived **only before testing, and only under the following conditions:**

- > Single-Allegation Cases. Costs may be waived **only with the supervisor's approval.** Approval should be based on some evidence the man would be unable to pay the amount of the charges, even in installments (for example, the man has limited or no income and no ability to earn income). If costs are waived the caseworker may seek a signed Consent to Genetic Testing that omits the cost language (to allow for a default action later on, if no NPR has been served), or may proceed without a signed consent.
- > Multiple-Allegation Cases. Genetic testing costs may be waived without supervisor approval if both of the following conditions apply:
 - (1) The caseworker has made a best effort to get a signed Consent to Genetic Testing with costs, and the alleged/presumed father has shown he will not be persuaded.
 - (2) The waiver would act as a negotiating tool that would allow for definite progress in the case (for example, voluntary testing could reduce the multiple-allegation case to a single-allegation case).

(Note that avoiding the cost of service or hearing is not a sufficient basis for waiving testing costs in **any** case.)

If costs are not waived, the CSED can either (a) issue an order that enters an automatic judgment if the man is found to be the father (this requires a

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subject: Genetic Testing

signed Consent to Genetic Testing or an NPR hearing--see PROCEDURES), or (b) schedule the testing without an order for costs, with the intention of attempting to recover costs through a judgment at a later date. With the latter option, the caseworker must be **careful not to imply** that costs are being waived.

Genetic Testing--Scientific Basis and Procedures. Genetic paternity testing is based on the principle that all persons inherit two sets of genes. One of these sets is inherited from the mother and the other from the father. These inherited characteristics are known as genetic markers. If a genetic marker is found in the child, but not in the mother, it must come from the father. If the alleged father does not have such a genetic marker, he is excluded as the biological father. When the alleged father has all the markers required to be the father, he cannot be excluded. Thereafter, a statistical probability of paternity can be calculated based upon the likelihood that the same marker patterns will occur or be found in the general population.

To perform genetic testing the laboratory needs genetic material from the person being tested. This material may be obtained from blood, cheek cells, or other cells. The laboratory performs certain tests on the tissue sample to identify the person's genetic markers; the principal tests conducted for this purpose are

- red cell antigen,
- enzymes and proteins (electrophoresis),
- white cell antigens (HLA), and
- DNA.

The first three of these tests require a blood sample; DNA testing can be performed on any tissue containing genetic material.

The CSED contracted laboratory determines which tests to perform on the tissue samples provided from the three parties (the alleged/presumed father, the mother, and the child). As results are obtained, testing proceeds until either (1) the results exclude the alleged/presumed father (one or more genetic markers are found in the child's tissue that are not present in the genetic material of either the mother or the alleged/presumed

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father) or (2) a probability is established of 95% or greater that the alleged/presumed father is the child's' natural father. Generally, the laboratory performs the first three (blood-required) tests first, proceeding to DNA testing only if necessary; charges are the same whether DNA testing is needed or not.

Testing Using Non-Blood Tissue. At this time the most common type of non-blood tissue used for genetic testing is cheek cells. This tissue is collected using a non-invasive procedure called a buccal swab. The buccal swab is an important alternative to traditional blood drawing, especially in cases where blood drawing is not feasible, such as for newborns or children under six months of age. If any party provides only non-blood tissue for testing, the laboratory must use DNA testing to determine paternity in the case.

Legal Consequences and CSED Weight of Genetic Testing Results. Under section 40-5-234, MCA, positive testing results (greater than or equal to 95% probability of paternity) create a legal presumption of paternity for the man tested. The CSED uses this presumption as an unconditional basis for establishing paternity for that man. Furthermore, if there are other allegations in the case, these other men are automatically excluded by the positive results that created the presumption. Also under 40-5-234, where genetic testing results show conclusively the man tested could not be the father, the CSED must exclude that man as father even if there is a non-scientific presumption in favor of his paternity.

PROCEDURES

RESPONSIBILITY

ACTION

Procedures 1 through 4 apply to voluntary testing only, before or after NPR is served.

CAUTION: In third-party obligee cases see section CS 602.2 for proper procedures in all steps involving "mother" below.

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Caseworker

1. Upon being contacted by (or upon contacting) alleged or presumed father concerning genetic testing, discusses advantages of voluntary testing and explains procedures involved. Advantages specifically applicable to case may include one or more of the following:

EXCEPTION: If "contact" is the return of the Consent to Genetic Testing, skip to step 3.

- (1) Produces definite information about the paternity of the child. Genetic testing will result in conclusive scientific evidence that either excludes the man as father or shows a probability of 95% or higher the man is the father.
- (2) Removes requirement for notice (if NPR not yet served). If the alleged/presumed father does not agree to testing, the CSED will initiate legal action by serving on him formal notice of parental responsibility.
- (3) Avoids formal hearing. If the alleged/presumed father does not agree to voluntary testing he will be ordered to appear for hearing; the hearing officer can order testing if there is any reason to believe the man could be the child's father.
- (4) Allows CSED to enter paternity order based on father's consent (multiple-allegation cases). If the alleged/presumed father in a multiple-allegation case has signed an Admission of Paternity, the Admission has no effect without confirmation by genetic testing.
- (5) (Applicable cases only) Is available at no cost. The CSED can waive testing costs if the alleged/presumed father participates voluntarily; if he does not, the CSED will order genetic testing and will require him to pay the testing costs if he is found to be the father.

CAUTION: This option is not standard procedure; it is available only under very strict conditions--see Recovery of Testing Fees, POLICY.

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2. Acts on results of discussion in step 1 as follows:
 - a. If alleged/presumed father agrees to voluntary testing, attempts to obtain his signature on Consent to Genetic Testing (this form accompanies both papa letter and NPR).
 - i. If alleged/presumed father signs and returns Consent to Genetic Testing (standard version), proceeds to step 3.
 - ii. If alleged/presumed father not willing to sign standard Consent to Genetic Testing, and conditions for waiving fees apply (see Recovery of Testing Fees, POLICY), proceeds as follows:
 - > If alleged/presumed father willing to sign Consent to Genetic Testing except for "costs" provision, prepares and sends variation of form omitting cost agreement; upon receipt of signed form, proceeds to step 3.
 - > If alleged/presumed father not willing to sign Consent to Genetic Testing without costs, proceeds to step 5.
 - iii. If alleged/presumed father not willing to sign standard Consent to Genetic Testing and conditions for waiving fees do not apply, **either**
 - schedules testing without Consent or waiver, if applicable (see Recovery of Testing Fees, POLICY, for specific conditions); proceeds to step 5, **or**
 - does not schedule testing; proceeds as in step 2b.

NOTE: Advantages of Formal Consent. In cases where voluntary testing is agreeable the caseworker should make every effort to obtain a signed Consent to Genetic Testing. This document increases the likelihood the man will

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appear for drawing, and gives the CSED the authority (1) to proceed against the man if he fails to appear for drawing and (2) unless costs are waived, to enforce payment of testing costs.

- b. If alleged/presumed father will not agree to voluntary testing, resumes case initiation procedures in CS 602.1 or 602.2, or proceeds with contested case as directed in section CS 605.2 or 605.3.
- 3. Upon receipt of signed Consent to Genetic Testing, proceeds as in 3a and 3b below.
 - a. Checks SEARCHS for any reason to protect address of alleged/presumed father. If reason found, and alleged/presumed father's address appears in Certificate of Mailing, or he has entered his address, telephone, or social security number on form by hand, attaches note to document warning that alleged/presumed father's address or other personal information should be deleted from any copy sent to other party.
 - b. Forwards original signed Consent to Genetic Testing to Office of Administrative Law Judge (OALJ); retains copy in case file.

OALJ

- 4. Issues genetic testing order (incorporated in Consent to Genetic Testing); mails copies to parties and caseworker.

Steps 5 through 17 apply to voluntary testing as well as to testing required after hearing.

Caseworker

- 5. Identifies suitable drawing sites for alleged/presumed father and for mother and child, according to respective home addresses. For in-state drawing, calls contact person at selected drawing site(s) and schedules appointment for alleged/presumed father, and separate appointment for mother and child. If child is less than six months old, informs contact person of child's birth date and requests

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sampling by buccal swab; if site does not have necessary materials, contacts contracted testing laboratory and requests buccal swab kit be sent to site. (See list of sites following these PROCEDURES for name and address of drawing facility, and name and telephone number of appropriate contact person.)

NOTE 1: Scheduling Mother and Child. If there is any reason to believe the alleged/presumed father may not appear for drawing, the caseworker should schedule the appointment for the mother and child for a date following the alleged/presumed father's scheduled date. Normally, only one appointment is needed for the mother and child, regardless of the number of allegations in the case.

NOTE 2: Out-of-State Drawing. In cases where the alleged/presumed father is located outside Montana, the caseworker should contact the CSED's contracted drawing laboratory and request an appointment. The contractor will identify a suitable out-of-state drawing facility, set up an appointment for the alleged/presumed father, send the chain of custody sheet and drawing kit to the facility, and notify the CSED of the date, time, facility and address, and contact person if needed.

6. For each appointment--alleged/presumed father, and mother and child--takes actions as follows:
 - a. Prepares form CS-601.1M or CS-601.1F, Genetic Testing Scheduling Letter, including name of contact person at drawing facility, if needed; sends by regular mail to person to be tested. (If person has been or will be served with Genetic Testing Subpoena under procedures in section CS 605.2, scheduling letter is not necessary.)
 - b. (In-state drawing only) Prepares chain of custody sheet and sends to drawing site prior to appointment, leaving testing

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method blank. (Chain of custody sheets are provided by CSED contracted testing laboratory.)

- c. Enters SEARCHS case note for drawing scheduled, giving date, time, and place.
- d. Monitors appearance of all parties for drawing appointments.

7. [This step applies only where genetic testing has not been ordered by Genetic Testing Subpoena. For procedures following failure to appear for drawing for subpoena-ordered genetic testing, see section CS 605.2 or 605.3.] If any party fails to appear for drawing, enters SEARCHS case note for failure to appear and contacts party about rescheduling appointment (see NOTE below). If party will not cooperate, takes action as follows:

- a. If alleged/presumed father fails to appear for drawing **and has signed** Consent to Genetic Testing,
 - in single-allegation case, follows procedures in section CS 606.1 for obtaining Paternity Default Order; also if applicable, proceeds to step 15 for recovering any costs for testing of mother and child.
 - in multiple-allegation case, consults with CSED staff attorney to determine appropriate remedy; works with attorney in obtaining district court order or in taking administrative actions (for example, contempt) to compel submission. Returns to this section (step 8) when and if alleged/presumed father finally participates.
- b. If alleged/presumed father fails to appear for drawing **and has not signed** Consent to Genetic Testing, begins (or resumes) contested case procedures as described in section CS 605.2 or 605.3.
- c. If mother and child (or either one) fail to appear for drawing, takes action as in section CS 605.2 to obtain mother's participation. Returns to this section

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(step 11) if mother finally participates.

NOTE: Rescheduling Missed Appointments--
Caseworker Discretion. The caseworker must determine on a case-by-case basis whether rescheduling is feasible. If the person seems likely to cooperate, it is in the CSED's interest to attempt to reschedule the appointment before taking any adverse action.

8. If circumstances indicate sample taken may be from person other than person intended by CSED, and

- genetic testing was ordered by CSED, either by Consent to Genetic Testing or by Genetic Testing Subpoena, contacts OALJ and requests additional hearing. Proceeds to step 10.
- genetic testing was not ordered by CSED, takes one of following steps, as appropriate:
 - > begins or resumes contested case procedures against alleged/presumed father as described in section CS 605.2.
 - > takes action against mother to compel participation as in section CS 605.2.

OALJ

9. Upon request of caseworker and for reasonable cause shown, schedules and holds hearing on issue of identity of person drawn or chain of custody of sample. Issues order upholding validity of sample, or requiring retesting, or entering default of party in question.

Caseworker

10. Prepares evidence for hearing; represents CSED at hearing, presenting evidence and testimony of witnesses as necessary.

- a. If hearing officer upholds validity of sample, proceeds to step 11.
- b. If hearing officer orders retesting, proceeds as for testing ordered after NPR hearing in section CS 605.2.
- c. If hearing officer enters Paternity Default Order, proceeds as for default on NPR hearing in section CS 605.2.

11. If all parties appear for drawing, and there

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is no question about identity of samples drawn, enters SEARCHS case note documenting appearance. Monitors for receipt of results from contracted testing laboratory; contacts laboratory to resolve any delays if results not received within four to six weeks.

12. Upon receipt of testing results, notifies parties, sends original results to CSED Paternity Registry (retaining copy for file), updates SEARCHS, and takes NOCS actions if applicable as in section CS 602.1, 605.2, or 605.3; pursues cost recovery as in step 15. In addition, if results are negative (man tested is excluded), proceeds according to steps 12a and 12b.

NOTE: CAUTION! Consequences of SEARCHS Processing. Certain direct, case-note entry actions automatically set up SEARCHS fee accounts. In updating SEARCHS information to document receipt of testing results, the caseworker should take care **not** to create a fee account unless it is specifically intended. See step 15 for specific conditions under which the CSED may set up a fee account for genetic testing costs.

Additional steps for negative testing results:

- a. Determines whether mother's confirmation of tested man's identity is needed. If so, arranges for mother to look at photograph of man taken at drawing site. (If at all possible, mother should come to CSED office to look at original photograph; if this is not possible, caseworker should obtain best copy of photograph and send to mother for confirmation.) If mother confirms identity, or if confirmation not needed, proceeds to step 12b.

If mother claims pictured man is not alleged/
presumed father, proceeds as in step 8.

NOTE: Determining Need for Confirmation.
Confirmation of an excluded man's

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identity via step 12a is standard CSED procedure. Regional policy, however, may limit this requirement to certain types of situations. For example, a region may elect to require confirmation only when (1) the caseworker suspects a man other than the alleged/presumed father was tested or (2) testing results exclude the last remaining alleged father **and** the mother claims she cannot provide any other names because no other men had sexual access during the period of conception (in this situation, confirmation of **all** tested men's identities would be indicated).

- b. If requested by either party or another state, prepares form CS-604.1A, Order of Nonpaternity, and sends to OALJ with testing results and
- stuffers for mailing to parties,
 - certified Montana birth certificate (if excluded man named on birth certificate),
 - any CSED order to be vacated or terminated by Order of Nonpaternity (examples: Paternity Default Order, NOCS support order), and
 - (optional) any voluntary acknowledgment of paternity or Notice of Intent to Claim Paternity signed by excluded man (helpful for any OALJ discussions with Vital Statistics Bureau).

OALJ

13. Upon receipt of form CS-604.1A, issues Order of Nonpaternity; mails copies to parties and caseworker; files genetic testing results and original Order of Nonpaternity, with any accompanying documents, in Paternity Registry.

Regional
Manager or
Designee

14. Upon receipt of bill for total genetic testing costs, verifies bill with caseworker (confirms testing was for CSED paternity case, and results were received in region); approves for payment and forwards to Administrative Support Unit (ASU). ASU will arrange for payment to laboratory for all parties tested.

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- Caseworker 15. Using cost recovery table following these PROCEDURES, determines whether and how to seek reimbursement for total testing costs paid by CSED. Takes action in step 15a, 15b, or 15c, as appropriate. (If alleged/presumed father pays testing costs before fee account is set up, discontinues action in this step and proceeds directly to step 16.)
- a. Sets up fee account on SEARCHS; includes amount in debt for future enforcement.
 - b. Includes proposed judgment in NOCS or subsequent notice, or, if applicable, in Admission of Paternity and Application for Paternity Consent Order sent to alleged/presumed father with positive testing results. Sets up fee account when order following notice or Admission is entered; includes amount in debt for future enforcement.
 - c. Takes no action to recover testing costs; does not set up fee account.

NOTE 1: Requirements for Fee Accounts. The CSED will set up a SEARCHS fee account for testing costs not yet paid by the alleged/presumed father **only if** a judgment has been entered for the fee amount. A judgment is "entered" for purposes of establishing a fee account as soon as **both** of the following conditions are met:

- (1) The CSED has issued an order listing the dollar amounts payable if test results are positive or if a default applies. (The order may be issued subsequent to a genetic testing hearing, or upon receipt of a signed Consent to Genetic Testing or Admission of Paternity and Application for Paternity Consent Order that includes testing costs, or subsequent to any CSED notice that proposes a judgment for testing fees.)
- (2) Results of genetic testing are positive, or a default applies.

In cases where payment is received before one or both of the above conditions are met,

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procedures in step 16 apply.

NOTE 2: Special Situations for Cost Recovery. The caseworker **may**, with the approval of the CSED staff attorney and the voluntary cooperation of the mother, arrange testing for a defaulted (established) father at his request. In this situation the CSED **must** collect the associated, non-refundable testing costs from the father **before** the costs are incurred (see step 16). In another situation, if the father claims paternity and the mother denies he is the father, and testing then results in a 95% probability of paternity, the caseworker **may** pursue a judgment against and repayment from the mother; consultation with the CSED staff attorney in this situation is required. Finally, if a person being tested insists on DNA testing--rather than allowing the laboratory to determine whether DNA testing is required in the case --the CSED **may** assist the person by making the necessary additional arrangements, and **must** collect the associated, non-refundable testing costs before they are incurred (see step 16).

NOTE 3: Testing in Non-CSED Case. Where CSED assistance is requested in arranging genetic testing for individuals who are not participants in a CSED case, the CSED refers the parties directly to the contracted testing laboratory and **does not** incur testing costs on their behalf. (See section CS 601.4, Requesting Genetic Testing, for case participants' options outside the CSED's regular administrative paternity establishment process.)

16. Upon receipt of payment for testing costs from alleged/presumed father proceeds as follows (for any that apply):
 - a. Sets up fee account if one does not already exist. If necessary, performs required SEARCHS processing to create fee account in absence of order (judgment) for fees.
 - b. If manual payment instruction (MPI) is appropriate (see NOTE below), enters MPI on SEARCHS to apply payment to fee

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account, and makes notation on check identifying payment for testing fees; forwards check to TAPP. If MPI not appropriate, forwards check to TAPP for regular processing through SEARCHS algorithm.

NOTE: Manual Payment Instruction for Fee Payments. An MPI is appropriate only when both of the following conditions are satisfied:

- (1) Posting to a fee account is proper. This is true when the support obligation of the alleged/presumed father for this child has not yet been established, so there is no current support account to satisfy.
 - (2) There are other SEARCHS accounts (in addition to the fee account created in 16a) to which the payment would be posted if run through the regular SEARCHS algorithm. For example, the alleged/presumed father may be an obligor in another case.
- c. If payment received before genetic testing results received, processes payment as in 16a and 16b above and awaits testing results. If results negative (and special situations in step 15, NOTE 2 do not apply), initiates SEARCHS adjustment to refund the payment.

LIST OF DRAWING SITES, SAMPLE CHAIN OF CUSTODY SHEET, AND COST
RECOVERY TABLE PROVIDED ON FOLLOWING PAGES

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BALTIMORE RH TYPING LABORATORY

400 WEST FRANKLIN STREET □ BALTIMORE, MD 21201



DRAW CENTERS FOR MONTANA

Anderson Paramedical
1601 2nd Avenue
Great Falls, MT 59401
Contact: Mary Hartnell
(406) 454-3247

Northern Montana Hospital
30 13th Street
Harve, MT 59501
Contact: Jim Bennett, Lab
(406) 265-2211

Missoula Medical, Inc.
1805 Bancroft
Missoula, MT 59801
Contact: Joanna Morrison
(406) 543-6850

Mineral Community Hospital
Roosevelt & Brooklyn
Superior, MT 59872
Contact: Jim Burnham, Lab
(406) 822-4841

Pro Med Services
630 West mercury
Butte, MT 59702
Contact: Leslie
(406) 723-8238

Madison Valley Hospital
217 North Main Street
Ennis, MT 59729
Contact: Melinda, Lab
(406) 682-4274

Twin Bridges Medical Center
104 S Madison - Drawer B
Twin Bridges, MT 59754
Contact: Darlene Beithon
(406) 684-5642

Granite Memorial Hospital
310 Sansome Street
Philipsburg, MT 59858
Contact: Mark, Lab Manager
(406) 859-3271

Helena Medical Lab
1930 9th Avenue
Helena, MT 59601
Contact: Ms. Debbie Thorpe
(406) 443-1700

Anderson Paramedical
1302 Avenue D
Billings, MT 59102
Contact: Kim or Terry
(406) 245-6840

Deconess Billings Health Clinic
2825 8th Avenue North
Billings, MT 59101
Contact: Chris Judd, Lab Manager
(406) 256-2500

Big Horn County Memorial
17 North Miles
Hardin, MT 59034
Contact: Sandra Gardineer
(406) 665-9226

Carbon County Memorial
600 West 20th Street
Red Lodge, MT 59068
Contact: Leslie Ryan, Lab
(406) 446-2345

Bozeman Deaconess Medical
915 Highland Blvd.
Bozeman, MT 59715
Contact: Linda, Lab
(406) 585-1010

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BALTIMORE RH TYPING LABORATORY

400 WEST FRANKLIN STREET □ BALTIMORE, MD 21201



MONTANA DRAW CENTERS CON'T.

Lewistown Paramedical Services
224 West Main Suite 260
Lewistown, MT 59467
Contact: Lois Fry
(406) 538-4110

Sidney Health Center
216 14th Avenue S W
Sidney, MT 59270
Contact: Carrie
(406) 482-2120

Francis Mahon Deaconess Hospital
621 3rd Street South
Glasgow, MT 59230
Contact: Merle Bert, Lab Dept.
(406) 228-4351

Glendive Medical Center
202 Prospect Drive
Glendive, MT 59330
Contact: Mike Long, Lab
(406) 365-3306

Valley Medical
2425 Highway 2 E
Kalispell, MT 59901
Contact: Bernice Mellum
(406) 257-1680
Fax: 257-3264

Holy Rosary Health Center
2600 Wilson Street
Miles City, MT 59301
Contact: Leann, Lab Dept.
(406) 233-2540

Silver Bow Health Care
401 South Alabama
Butte, MT 59701
Contact: Dawn Orne, Lab
(406) 723-4075

Colstrip Medical Center
6230 Main Street
Colstrip, MT 59323
Contact: Lila, Lab
(406) 748-3600

Marcus Daly Hospital
1200 Westwood Drive
Hamilton, MT 59840
Contact: Barb Anderson, Lab
(406) 363-2211

Trinity Hospital
315 Knapp Street
Wolf Point, MT 59201
Contact: Dawn Nagel, Lab
(406) 653-2100

Browning Community Hospital
Indian Health Services
P.O. Box 760
Browning, MT 59417-0760
Contact: Ms. Amoriette Gaither
(406) 338-6111

Tri-Med Services
300 North Wilson
Suite 300 1 A
Bozeman, MT 59715
Contact: Paternity Dept.
(406) 585 3301

Joanna Morrison (406) 543-6850 - Draws at Deer Lodge Prison
the 1st Monday of each month
Cam Cherry (406) 761-2664 - Draws at the Great Falls CSE Office
Mary Kenison (406) 444-7944 - Draws at the Butte CSE Office

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BALTIMORE RH TYPING LABORATORY

400 WEST FRANKLIN STREET □ BALTIMORE, MD 21201

(410) 225-9595 □ 1-800-765-5170

PATERNITY INFORMATION & CUSTODY SHEET

IT IS VERY IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED.

Has any party received a *blood transfusion* within the last THREE months prior to testing or
has anyone ever received a *bone marrow transplant*? If so, give dates below where indicated.

SAMPLES MUST BE DRAWN ON MONDAY, TUESDAY OR WEDNESDAY ONLY AND MUST BE RECEIVED AT THE
BALTIMORE Rh LABORATORY WITHIN 24 HOURS OF DRAWING!

ORIGINAL REPORT TO:	DRAWING CENTER	BILL TO: _____ (If Biller different from original report)
COPY OF REPORT TO:	TEST REQUESTED: ☐ Per CONTRACT ☐ RED CELL ☐ HLA ☐ DNA (additional test) ☐ DNA ONLY	FOR TESTING LABORATORY ONLY: Rh Lab Case#: _____ Draw Ctr Code: _____ Payment Rcvd: _____ Bill Amount: _____

☐ If required, check this box and record additional information on back of form.

ATTACH PICTURE AS INDICATED ON BACK OF FORM

CLIENT CASE/COURT#:

DATE SAMPLES DRAWN:

LAB #	NAMES & IDENTIFICATION	BIRTH DATE	TRANSFUSION DATES	DRAWN BY SIGNATURE	
	MOTHER:			TECH: _____	
	ID#1:	BIRTH:	BLOOD:	G	R Y L TUBES DRAWN
	ID#2:		MARROW:		
	CHILD#1:	BIRTH:	BLOOD:	TECH: _____	
			MARROW:	G	R Y L TUBES DRAWN
	CHILD#2:	BIRTH:	BLOOD:	TECH: _____	
			MARROW:	G	R Y L TUBES DRAWN
	ALLEGED FATHER			TECH: _____	
	ID#1:	BIRTH:	BLOOD:	G	R Y L TUBES DRAWN
	ID#2:		MARROW:		

STATEMENT OF RELEASE: I hereby certify the information provided is correct. I am agreeable to furnishing a blood sample from myself and the child(ren) listed a paternity study by the Baltimore Rh Typing Laboratory, and grant permission to release the results of testing to the listed representative(s). (Please sign and indicate your race. Race is necessary for probability calculation)

MOTHER: _____
RACE: ☐ Black ☐ Hispanic ☐ Native American ☐ Oriental ☐ White
☐ Other (Please specify) _____

ALLEGED FATHER: _____
RACE: ☐ Black ☐ Hispanic ☐ Native American ☐ Oriental ☐ White
☐ Other (Please specify) _____

I verify that samples of my blood have been extracted and I have checked and initialed the tube labels; and,
I am satisfied that my blood is in the properly labeled tubes. (Mother verifies child's tubes)

WITNESS: _____
DATE: _____

MOTHER: _____ ALLEGED FATHER: _____

Specimens packaged for shipment and/or returned to Laboratory by: _____

Date: _____

FOR TESTING LABORATORY USE ONLY

How did samples arrive at laboratory? _____

ID/Airbill#: _____

PACKAGE: Envelope ☐ Tape ☐ Condition: _____

RECEIVED				LABELS				CONDITION		COMMENTS	
Received By:	Opened By:	TUBES RECEIVED	G R Y L	NAME	INIT	CONDITION	COMMENTS				
Initials: _____	Initials: _____	Mother									
Date: _____	Date: _____	Child #1									
Time: _____	Time: _____	Child #2									
		Alleged Father									

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ATTACH PHOTOGRAPH:

SIGNED & DATED BY:

MOTHER and ALLEGED FATHER

Write and describe additional information here.

PLACE THUMB PRINT BELOW: (Optional)

MOTHER

ALLEGED FATHER

IMPORTANT! INCLUDE ALL INDIVIDUALS (if present) IN ONE PHOTOGRAPH.

ATTACH PHOTOGRAPH:

Write and describe additional information here.

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Recovery of Genetic Testing Costs

SCENARIO	LIABLE PARTY	RECOVERY PROCEDURES
All parties appear for drawing, results = 95%		
> Signed Consent to BT (w/costs) (automatic judgment)	Father	Set up fee account; include in debt for future enforcement
> Oral agreement to BT, costs not waived by caseworker	Father	Include proposed judgment in NOCS, subsequent notice, or Admission; set up fee account when order following notice/ Admission entered; include in debt for future enforcement
> BT Subpoena - judgment for costs awarded at hearing (automatic judgment)	Father	Set up fee account; include in debt for future enforcement
- judgment for costs denied at hearing	CSED	n/a
> Oral or written consent to BT, costs waived by caseworker	CSED	n/a
All parties appear, results exclude AF/PF	CSED	n/a
AF/PF does not appear; mother and child drawn		
> Signed Consent to BT (w/costs) (automatic judgment)	*Father, upon default	Set up fee account; include in debt for future enforcement
> Oral agreement to BT	CSED	n/a
> BT Subpoena - judgment for costs awarded at hearing (automatic judgment)	*Father, upon default	Set up fee account; include in debt for future enforcement
- judgment for costs denied at hearing	CSED	n/a
> Written consent to BT, costs waived by caseworker	CSED	n/a
AF/PF drawn, mother and child do not appear	CSED	n/a

* single-allegation cases only (in multiple-allegation cases where man does not appear for drawing, CSED pays costs; if non-appearing man is later established as father by exclusion of all other parties, single-allegation cost recovery then applies)

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Notice of Parental
Responsibility--Single-
Allegation Cases

SUPERSEDES: CS 605.2, Notice of Parental Responsibility--
Single-Allegation Cases, September 30, 1995

REFERENCES: Sections 40-5-231 through 40-5-237, and 40-6-101
through 40-6-118, MCA; Rule 301, Montana Rules of
Evidence

POLICY: Applicability. The procedures in this section
apply only when the following four conditions are
met:

- (1) The case meets the definition of a single-
allegation, unresolved paternity case given in
section CS 602.1
- (2) The CSED can assert personal jurisdiction over
the alleged father
- (3) In the determination of the caseworker there
is reasonable cause to proceed with the
contested case against the alleged father
- (4) The CSED has taken the appropriate case
initiation steps under section CS 602.1,
including obtaining birth records and mother's
information; entering case information on
SEARCHS; and, except in special situations,
contacting the alleged father and giving him
an opportunity to resolve paternity
voluntarily.

See section CS 602.1 for further details on
jurisdiction, reasonable cause, and special
situations for omitting initial contact. For
multiple-allegation cases that otherwise meet the
above conditions, refer to procedures in section CS
605.3.

Purpose of the NPR. The CSED uses the Notice of
Parental Responsibility (NPR) to begin the process
of resolving contested paternity through genetic
testing. The NPR gives the alleged father the
opportunity to formally deny paternity and request
a hearing, or to eliminate the need for a hearing
by agreeing to genetic testing. The purpose of the
hearing is to determine whether genetic testing
should be ordered. The NPR is also used (1) to
obtain resolution of paternity by direct consent of
the alleged father or (2) to force resolution of
paternity by default, if the alleged father fails
to respond to the notice.

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Combined NPR-NOCS Process. Except as listed below the CSED will issue the Notice of Parental Responsibility concurrently with the Notice and Order Concerning Support (NOCS), and will arrange for service of both notices and all accompanying documents in a single, combined package. Procedures for issuing and taking action on both the combined package and the NPR alone are given in this section. Section CS 401.3, Notice and Order Concerning Support, gives further details for NOCS procedures.

EXCEPTIONS: The CSED will proceed to issue an NPR **without** an accompanying NOCS only in the following situations:

- (1) The paternity case was previously barred by the statute of limitations **and** the case is a public assistance case. ("Previously barred" cases are those where the first IV-D application or referral was made before March 19, 1985, and no petition to establish paternity was filed in court within certain prescribed time limits; see historical versions of section 40-6-108, MCA for more specific parameters.) The CSED staff attorney should be consulted in determining whether a case is subject to this restriction.
- (2) The alleged father is under the age of 18. The CSED will not proceed to establish a support obligation until the obligor in the case is 18 years old.

NOTE: Special Requirements for Serving Minors. In a case where the alleged father is under the age of 18 the CSED will proceed to establish paternity; however, special requirements--including notification of the alleged father's parents--apply to service of the NPR and other subsequent actions. Consult the CSED staff attorney before taking **any** action against a minor alleged father.

- (3) The CSED has jurisdiction to establish paternity but not to establish the subsequent support order.

NOTE: When Paternity "Contacts" Insufficient for Jurisdiction to Establish Support Order.

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In most cases jurisdiction to establish paternity implies jurisdiction to establish the support order, but in some (rare) cases it does not. Certain jurisdictional "contacts" can be stronger for purposes of paternity than for order establishment, especially those that involve the alleged father's relationship with the child in the past. Consult the CSED staff attorney whenever jurisdiction to establish a support order is based solely on one of the following conditions:

- (a) The alleged father resided with the child in Montana
 - (b) The alleged father resided in Montana and provided prenatal expenses or support for the child
 - (c) The child resided in Montana as a result of the alleged father's acts or directives.
- (4) The case is a non-IV-E foster care referral. Under Montana law **only the courts** can establish child support orders in these cases. The CSED can establish paternity, but may not proceed to establishment of the support obligation. (This exception does not apply to IV-E cases.)

Notice of Default. The Notice of Default is an optional step in both the NPR and NOCS default processes, used at the discretion of the caseworker and subject to regional policy. Generally the Notice of Default applies when (1) the alleged father has contacted the CSED in response to the combined service but has not taken appropriate action on the notice in question and (2) **in the discretion of the caseworker** a Notice of Default would serve a useful purpose in the case by prompting the alleged father to take appropriate action on the NPR or NOCS. "Appropriate action" means formal agreement to the proposed CSED action; written request for hearing; or specified cooperative action such as agreeing to genetic testing (NPR) or providing financial information (NOCS).

Time Frames. Federal time frames for establishing support orders are very strict, and do not allow

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extra time for establishing paternity. The caseworker must manage all paternity and NOCS decisions and actions in this section in a way most likely to meet the following "expedited process" requirement:

- > The CSED must establish a support order or dismiss the action within 6 months after service of the Notice and Order Concerning Support. This time frame applies regardless of whether the CSED must also establish paternity in the case.

PROCEDURES

CAUTION: In third-party obligee cases see section CS 602.2 for proper procedures in all steps involving "mother" below.

RESPONSIBILITY

ACTION

- | | |
|------------|--|
| Caseworker | <ol style="list-style-type: none"> 1. Determines whether combined NPR-NOCS package is appropriate (see POLICY, this section). If so, proceeds to step 2.

 <p>If combined package is not appropriate, proceeds with NPR alone, as follows:</p> <ol style="list-style-type: none"> a. Prepares and issues for service on alleged father NPR package containing items (2) through (5), and if applicable item (8), from step 2. Retains copies in case file. b. Obtains service of NPR package by personal service; acknowledgment; or certified mail, restricted delivery, return receipt requested. c. Continues with actions in steps 3 through 29 as applicable, disregarding references to NOCS case or actions. Proceeds to section CS 401.3, Notice and Order Concerning Support, upon resolution of paternity. 2. Prepares and issues combined paternity/financial notice package for service on alleged father. Complete notice package includes <ol style="list-style-type: none"> (1) Form CS-605.2D, Cover Letter for Combined NPR-NOCS Package |
|------------|--|

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- (2) Form CS-605.2A, Notice of Parental Responsibility
- (3) Form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order (accompanied by paternity information for parents information sheet, explaining rights, responsibilities, and consequences; information sheet may be omitted if previously sent to this man in same case)

NOTE: If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the "multiple-allegation" version of the Admission form, containing informed consent language, is required. In this situation the form must be adjusted to remove the reference to positive genetic testing results.

- (4) Form CS-606.2B, Statement Concerning Paternity (containing Denial of Paternity and Request for Hearing)
- (5) Form CS-606.2F, Consent to Genetic Testing
- (6) Form CS-401.3A, Notice and Order Concerning Support
- (7) Form CS-404.6A, Financial Affidavit
- (8) (Where service by certified mail is not appropriate or cannot be obtained) Service document--either form CS-401.3C, Sheriff's Praecipe, or form CS-405.1, Acknowledgment of Receipt of Notice and Waiver of Service.

Retains copy of notices and service document in case file.

NOTE: Combined Praecipe. When a sheriff's praecipe is used, the caseworker is responsible for adapting the praecipe for service of both notices. In most cases a single praecipe, instructing the sheriff to serve both the NPR and the NOCS on the man named, is appropriate. In some cases two praecipes may be needed (for example, where the sheriff's office specifically requires a

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separate praecipe for each notice, or where the return of service following a "combined" praecipe will not include the names of the individual notices).

3. Obtains service of the notice package by (1) certified mail, restricted delivery, return receipt requested, (2) personal service of package through sheriff or civil process server, or (3) acknowledgment. Monitors for return of appropriate document(s), or for contact by alleged father, within 20 calendar days of service.

NOTE: Out-of-State Service. When service is to occur outside Montana, and certified mail has not been effective, the caseworker should attempt to identify the best option--in terms of time and cost--for service in the local jurisdiction. Process servers (both sheriffs' offices and private process servers) vary in fees charged, prepayment requirements, reliability, and delivery time. If payment is required in advance, the caseworker must arrange for a state warrant; supervisor approval is required for private service of process.

4. Concurrently with service of above notices on alleged father, follows applicable procedures in section CS 401.3 relating to mother or third-party custodian.
5. Takes action appropriate to alleged father's timely response to notice package as follows:

NOTE 1: "Timely" Response. If an alleged father responds after the 20-day period has passed, but before any default order in step 7 is entered, the response is treated as timely.

NOTE 2: Responder's Intent. In processing the response to the combined NPR-NOCS package, the caseworker should consider whether a returned document represents the alleged father's true intention for the corresponding notice. If there is evidence it does not, the caseworker should contact the alleged father

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and clarify the response. For example, the alleged father may return the NOCS Request for Hearing in an attempt to contest the paternity allegation.

- a. If alleged father does not contact CSED, or contacts CSED but does not follow with action appropriate to NPR, follows procedures in section CS 606.1 for obtaining Paternity Default Order and performing necessary SEARCHS processing; **concurrently**, takes appropriate action in step 6 for establishment of support order:

NOTE: Option for Notice of Default. If regional policy allows, and if in the discretion of the caseworker a Notice of Default would apply (see POLICY), the caseworker **may** choose to add this step to the default action in 5a above by proceeding as follows:

- > Prepares and sends to alleged father by regular mail and according to procedures in section CS 405.4, form CS-405.4, Notice of Default, adjusting language to fit paternity default situation. If alleged father responds to Notice of Default by taking action in any of steps 5b through 5e within 10 working days, proceeds according to that step. If not, proceeds as in step 5a above.
- b. If alleged father returns signed Consent to Genetic Testing, or contacts CSED and orally agrees to genetic testing, follows procedures in section CS 604.1 for seeking Consent to Genetic Testing (if not already submitted), scheduling appointments and notifying alleged father and mother, monitoring appearance of alleged father and of mother and child, taking action after any failure to appear, obtaining results, and settling costs. Returns to this section to process testing results; proceeds at that

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time with NOCS case as in step 6.

- c. If alleged father returns signed Admission of Paternity and Application for Paternity Consent Order, follows procedures in section CS 606.2 for obtaining Paternity Consent Order and performing necessary SEARCHS processing; **concurrently**, proceeds with NOCS case as in step 6.
- d. If alleged father returns signed Statement of Paternity, or equivalent document requesting NPR hearing, to OALJ, proceeds as in step 11. (If request received directly in region, faxes immediately to OALJ, and follows immediately with original by regular mail.) Upon resolution of paternity, proceeds with NOCS case as in step 6.
- e. If alleged father contacts CSED and proves he could not be child's father, dismisses both NPR and NOCS using two (separate) forms CS-403.1F, Motion and Order to Dismiss Administrative Notice, adapted as necessary; updates SEARCHS CHL and CAP screens; and proceeds to step 22.

NOTE: Proof Required for Dismissal. Proof the man could not be the child's father must be conclusive and **must be approved by the CSED staff attorney.** Generally proof must be in the form of

- a showing the alleged father did not have access to the child's mother during the probable time of conception (for example, he was on board a ship at sea or in prison), or
- medical statements affirming he was physically incapable of fathering a child during the time the child was conceived, or
- a showing the notice package was served on the wrong man.

- 6. Upon resolution of paternity, takes action in

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section CS 401.3 according to alleged father's timely response to NOCS.

EXCEPTION: If conditions for NPR default (step 5a) or NPR consent (step 5c) apply, does not wait for "resolution" via final paternity order, but proceeds with applicable action in section CS 401.3 concurrently with paternity default or consent process. **Advises OALJ of concurrent paternity process when transmitting any NOCS-related documents under this exception.**

NOTE: Coordinating NOCS Actions. **IMPORTANT!** The caseworker is responsible for managing the timing and completion of all CSED actions following service of the NPR-NOCS package. To comply with strict federal time frames for expedited process in support order establishment, it is essential the CSED proceed with the next step in the NOCS case as soon as it becomes appropriate.

OALJ

7. Upon receipt of paternity default or paternity consent package from caseworker, proceeds as in section CS 606.1, Paternity Default Order, or 606.2, Paternity Consent Order, respectively. Upon entry of final order, proceeds with any pending support order actions requested by caseworker under EXCEPTION in step 6.
8. Upon receipt of NOCS-related documents, checks SEARCHS for resolution of paternity and proceeds as follows:
 - a. If paternity has been resolved, proceeds as in section CS 401.3.
 - b. If paternity has not been resolved,
 - and documents relate to support order action requested by caseworker under EXCEPTION in step 6, delays entry of requested support order until final paternity default or consent is entered.
 - and document is request for hearing from alleged father or mother in response to NOCS, stays any hearing action in NOCS case pending

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resolution of paternity issue;
advises caseworker NOCS hearing is
stayed.

- Caseworker 9. Upon resolution of paternity in case in which NOCS action was stayed by OALJ in step 8b, reactivates NOCS case by notifying OALJ by telephone, electronically, or in writing. Paternity is "resolved" for purposes of NOCS reactivation when one of the following events occurs:
- (1) CSED Paternity Default Order is issued
 - (2) CSED Paternity Consent Order is issued
 - (3) Paternity order is issued by district court
 - (4) Genetic testing results establishing man as father are received at OALJ's Paternity Registry.
- OALJ 10. Upon receipt of Statement Concerning Paternity (requesting NPR hearing), notifies caseworker of request and calendars 10 working days for caseworker response.
- Caseworker 11. Immediately upon being notified of request for hearing (or as soon as possible within 10 working days) contacts alleged father about voluntary genetic testing; explains advantages of voluntary testing to alleged father, namely
- hearing officer will **order** genetic testing if there is any reason to believe alleged father could be child's father;
 - (at caseworker's discretion, if conditions in section CS 604.1 for waiving genetic testing fee apply) voluntary genetic testing is available at no charge, but cost of genetic testing following a hearing will be **charged to alleged father** if he is found to be true father.
- If alleged father agrees to voluntary testing, informs OALJ and proceeds as in step 5b. If alleged father does not agree, informs OALJ and proceeds to step 13.
- OALJ 12. If within 10 working days alleged father does not agree to voluntary testing, proceeds to schedule and conduct prehearing conference

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with caseworker and alleged father. At conference sets hearing date and any discovery date. Issues Notice and Order for Hearing.

- Caseworker 13. Attends prehearing conference; continues conversation with alleged father after conference officially concluded (after hearing officer disconnects from call) to again attempt to persuade alleged father to submit to voluntary genetic testing. If alleged father agrees, proceeds as in step 16.
- OALJ 14. After prehearing conference and upon proper request of caseworker or alleged father, issues subpoenas as required to compel appearance of witnesses at hearing or to obtain evidence.
- Caseworker 15. Conducts discovery as necessary; compiles exhibits for evidence at hearing, and prepares list of witnesses and exhibits. Checks SEARCHS for any reason to protect addresses or other personal information contained in exhibits. (For example, both the Paternity Affidavit and the Statement Concerning Paternity contain an address entered by the person returning the form--that is, the mother and the alleged father, respectively.) If found, ensures that protected information is removed from copies sent to other hearing participants (see paragraph below), and informs OALJ of information to be protected.

Copies exhibits and list, and distributes copies to participants by exhibits due date, with original to OALJ; retains one copy for case file.

Arranges for testimony at hearing, including testimony of mother (in cases where mother is unavailable, consults CSED staff attorney). Requests subpoenas as necessary to produce witnesses or documents, using procedures in section CS 405.8. (Subpoenas for obtaining information prior to hearing are subject to discovery deadline; subpoenas compelling only appearance at hearing are not.)

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NOTE: Evidence at Hearing. Evidence presented at hearing must support a "reasonable probability" the man had sexual intercourse with the mother during the probable time of conception. Refer to section CS 602.5, Evidence at Hearing, for guidance on identifying and evaluating possible evidence, and on preparing the case for hearing.

16. If after hearing is set alleged father agrees to voluntary genetic testing, proceeds as in step 5b. **In addition**, resolves hearing date as follows:

- a. If alleged father has signed Consent to Genetic Testing, dismisses hearing by preparing and sending to OALJ form CS-605.2C, Motion and Order to Vacate/Dismiss Hearing Date, with copy to alleged father and obligee.
- b. If alleged father is not willing to sign Consent to Genetic Testing and testing date is **later** than hearing date, vacates hearing (form CS-605.2C). If alleged father appears and participates in testing, dismisses hearing date (form CS-605.2C); if alleged father fails to appear, contacts OALJ to reschedule hearing and proceeds to step 15.

NOTE: Caseworker Discretion in Vacating Hearing. In this situation the caseworker may elect to proceed with the requested hearing despite the voluntary agreement. This determination should be based on the facts of the case (for example, the alleged father is likely not to appear for testing; or, there is a special need for a hearing record in the case).

- c. If alleged father is not willing to sign Consent to Genetic Testing and testing date is **earlier** than hearing date, allows hearing date to stand, pending alleged father's appearance at testing. If alleged father appears and participates

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in testing, dismisses hearing date (form CS-605.2C); if alleged father fails to appear, proceeds with hearing.

17. If after hearing is set alleged father submits signed Admission of Paternity and Application for Paternity Consent Order, or proves he could not be child's father (see NOTE in step 5e), updates SEARCHS (CHL and CAP screens), and dismisses hearing by preparing and sending to OALJ form CS-605.2C, Motion and Order to Vacate/Dismiss Hearing Date, with copy to alleged father and obligee. For Admission, also proceeds as in step 5c.
- OALJ
18. Conducts hearing in accordance with requirements of sections 40-5-226, 40-5-233, and 40-5-253, MCA.
- NOTE: Scope of Hearing. The scope and purpose of the hearing is limited to the single issue of "reasonable probability" (of sexual access or presumption) as a basis for ordering genetic testing. The hearing does **not** directly determine paternity or non-paternity.
- Caseworker
19. Attends and represents CSED at hearing, presenting evidence and testimony of witnesses as necessary. Requests Hearing Officer enter judgment for genetic testing costs (see section CS 604.1 for use of judgment in cost recovery). If alleged father fails to appear for hearing, requests Hearing Officer issue Paternity Default Order.
- OALJ
20. Issues order advising parties of results of hearing.
- Caseworker
21. Upon receiving results of hearing takes action as follows:
 - a. If Hearing Officer has entered Paternity Default Order, follows appropriate procedures in section CS 606.1; proceeds with NOCS case as in step 6.
 - b. If Hearing Officer has determined there is no "reasonable probability" basis for ordering genetic testing, dismisses NOCS

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- as in section 401.3 and, after consultation with CSED staff attorney, either
- pursues and obtains additional evidence against alleged father and issues new NPR-NOCS, or
 - updates SEARCHS (CHL and CAP screens) to exclude alleged father, and proceeds to step 22.
- c. If Hearing Officer has determined reasonable probability exists and alleged father should be required to submit to genetic testing, schedules genetic testing as in section CS 604.1 and proceeds to step 23.
22. If alleged father is excluded by genetic testing, or action against him is dropped before or as a result of hearing (step 5e or step 21b), contacts mother about other possible fathers. Proceeds with case initiation (section CS 602.1) for any new allegations, including "unknowns." If no other allegation identified, notifies assistance agency mother has not cooperated; or, begins case closure in non-public assistance case; or, obtains investigative subpoena (section CS 405.12) to compel mother to cooperate (see section CS 602.1 for proper use of this option).
23. Prepares and sends to OALJ for approval form CS-605.2B, Genetic Testing Subpoena, listing date, time, and place of appointment for alleged father. Also, if subpoena required to secure participation of mother and child, prepares and sends to OALJ Genetic Testing Subpoena for mother's appointment.

NOTE: Determining Need for Subpoena of Mother. A subpoena is appropriate only when (1) the ordinary processes of case closure or reduction of public assistance benefits are not available and (2) the mother is not expected to cooperate voluntarily. Generally, the success of attempts to schedule the genetic testing appointment, or the nature of previous contacts with the mother, will

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indicate whether she is likely to cooperate. Subpoenas are most common in third-party obligee cases where there has been little (or unproductive) contact with the child's natural mother, and in public assistance cases where the mother is not included in the assistance benefit.

- OALJ 24. Issues Genetic Testing Subpoena(s) and returns to caseworker for service.
- Caseworker 25. Secures service of Genetic Testing Subpoena on father (and, if applicable, on mother) by personal service or acknowledgment.

NOTE: Service of Subpoena Before Testing Date. If sheriff's service cannot be assured before the scheduled testing date, it may be necessary to obtain private service of process.

26. Monitors genetic testing appointments for appearance and participation of appropriate parties, as described in section CS 604.1, and takes action as follows:
- a. If alleged father fails to appear for testing appointment, prepares default forms CS-606.1A and CS-606.1B and proceeds as in section CS 606.1; proceeds with NOCS case as in step 6.
 - b. If unsubpoenaed mother fails to appear with child for testing appointment, contacts mother and attempts to reschedule. If mother refuses to appear takes action as follows:

NOTE: Option to Proceed Against Mother Immediately. Upon the mother's failure to appear, the caseworker may elect to proceed directly to the following actions.

- i. In public assistance case (mother obligee),
 - if mother included in assistance benefit, notifies assistance agency mother has

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- not cooperated.
- if mother not included in assistance benefit, enforces appearance by Genetic Testing Subpoena as in steps 23 and 25.
- ii. In non-public assistance case (mother obligee), begins case closure procedures. (NOTE: For father applicant, enforces appearance of mother and child by Genetic Testing Subpoena as in steps 23 and 25.)
- iii. In third-party obligee case, enforces appearance by Genetic Testing Subpoena as in steps 23 and 25.

NOTE: Failure to Obey Genetic Testing Subpoena. If the mother fails to appear for genetic testing after being served with a Genetic Testing Subpoena, the caseworker should consult with the CSED staff attorney about obtaining a district court order or initiating some other appropriate remedy (contempt, license suspension) to compel her submission.

27. If all parties appear for genetic testing, follows procedures in section 604.1 for obtaining results and settling costs.
- a. If results of genetic testing are positive, takes concurrent actions as follows:
- i. Sends package to father containing
 - Form 601.1R, Genetic Testing Results Cover Letter,
 - Copy of genetic testing results,
 - Admission of Paternity and Application for Paternity Consent Order, and
 - Any applicable forms for continuing NOCS process (for example, Notice of Default, amended NOCS).
 - ii. Sends package to mother containing
 - Cover letter (regional or

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- custom) explaining results and coordination with NOCS process,
- Copy of genetic testing results, and
- Any applicable forms for continuing NOCS process.

iii. Sends original results to CSED Paternity Registry at OALJ.

iv. Performs necessary SEARCHS processing on CHL and CAP screens to establish alleged father as father; if applicable, notifies public assistance agency of paternity establishment (does **not** send copy of actual testing results to assistance agency).

NOTE: Confidentiality of Testing Results. The printed testing results received from the contracted testing laboratory, listing the probability of paternity and other scientific data, are **confidential**. The caseworker may give to the public assistance agency only the general information that genetic testing did or did not provide a presumption of paternity.

v. Completes resolution of paternity case as in step 29; simultaneously, returns to NOCS case (reactivates case with OALJ if necessary, as in step 9) and proceeds as in step 6.

b. If results of genetic testing are **negative**, takes concurrent actions as follows:

i. Sends package to father containing

- Cover letter (regional or custom) explaining results
- Copy of genetic testing results.

ii. Sends package to mother containing

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- Cover letter (regional or custom) explaining results and
 - > in non-public assistance case, informing mother of closure proceedings if she does not provide names of other possible fathers to CSED
 - > in public assistance case, requesting mother's cooperation in providing names of other possible fathers to public assistance agency for referral to CSED
- Copy of genetic testing results.

iii. Sends original results to CSED Paternity Registry at OALJ; retains copy for file.

iv. Performs necessary SEARCHS processing on CAP and CHL screens to exclude alleged father; if applicable, notifies public assistance agency of change in participant's status (does **not** send copy of actual testing results to assistance agency--see NOTE in step 27a(iv)).

v. Dismisses NOCS as in step 5e.

vi. Reviews case information and proceeds as in step 22.

[step 28 deleted]

29. Following notification of father about positive genetic testing results, **and while proceeding with NOCS case**, takes action as follows:

- a. If father signs and returns Admission, updates SEARCHS (CHL screen) for the admission and proceeds as in section CS 606.2, Paternity Consent Order.

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- b. If father contacts CSED and continues to deny paternity, follows procedures in section CS 606.4, Referral to District Court.

NOTE: Concurrent NOCS Actions. The father has 20 days from receipt of positive genetic testing results to file an objection. The CSED does not stay NOCS action during this response period, but proceeds with the next appropriate NOCS action while the response period runs.

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

ALLEGED FATHER'S FULL NAME: _____

CHILD'S FULL NAME: _____

MOTHER'S FULL NAME: _____

MAIDEN NAME: _____ CASE NUMBER: _____

BLOOD TEST SUBPOENA

TO: _____

IN THE NAME OF THE STATE OF MONTANA, the Child Support Enforcement Division (CSED) commands you to appear on _____, at _____ m. and submit to a drawing of blood samples at:

Address: _____

No excuses will be accepted should you fail to appear. Failure to obey this subpoena and appear at the scheduled blood test may result in one or more of the actions checked below:

- ☐ a final determination of paternity against you.
- ☐ contempt proceedings against you.
- ☐ a recommendation that your needs be removed from your AFDC grant.
- ☐ closure of our Non-AFDC case.
- ☐ cost of blood testing for the party or parties who did appear for testing.

You must bring your driver's license or other photographic identification to the draw site. Your thumbprint and/or photograph will be taken at the draw site.

DATED this ____ day of _____, 19____.

By: _____
HEARING OFFICER

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

ALLEGED FATHER'S FULL NAME: _____

CHILD'S FULL NAME: _____

MOTHER'S FULL NAME: _____

MAIDEN NAME: _____ CASE NUMBER: _____

**MOTION AND ORDER TO
VACATE / DISMISS HEARING DATE**

TO: THE CSED HEARING OFFICER

The Child Support Enforcement Division (CSED) representative, whose name appears below, moves the Hearing Officer for the order described below. An administrative blood test hearing was requested to see if reasonable cause exists to believe that the alleged father could be the child's natural father. If so, the Hearing Officer could have issued an order requiring the mother, child and alleged father to appear for a drawing of blood samples for genetic testing. If checked:

☐ A. The administrative fair hearing in this matter should be **VACATED WITHOUT DATE**, pending the results of genetic tests or further motion by one or more of the parties, because (if checked):

☐ 1. The mother, child and alleged father have submitted blood samples for genetic blood testing; or,

☐ 2. The alleged father, mother and child have agreed to submit the samples for genetic testing. They will appear at a date, time and place specified by the CSED for the drawing of blood samples; or,

☐ 3. Other. Please specify: _____

☐ B. The administrative blood test fair hearing in this matter should be **DISMISSED** as moot because (if checked):

☐ 1. Genetic blood test results indicated a 95% or greater chance that the alleged father is the biological father of the child; or,

☐ 2. Genetic blood test results excluded the alleged father as a possible biological father of the child; or,

☐ 3. The alleged father has filed an **ADMISSION OF PATERNITY** with the CSED.

☐ 4. Other. Please specify: _____

Date: _____

Child Support Enforcement Division

Telephone: _____

SEE OTHER SIDE

CS605.2C
(Rev. 7/92)

DECISION AND ORDER

Upon the foregoing motion, good cause appearing therefrom, IT IS HEREBY ORDERED that the administrative hearing in this matter be, and is hereby:

- ☐ **vacated without date.**
- ☐ **dismissed without prejudice.**
- ☐ **dismissed with prejudice.**

DATED this _____ day of _____, 19_____.

HEARING OFFICER

CERTIFICATE OF MAILING

This is to certify that I, one of the legal unit administrative staff, deposited in the regular U.S. Mail, postage prepaid on the _____ day of _____, 19_____, a true and correct copy of the foregoing MOTION AND ORDER TO VACATE/DISMISS HEARING DATE to the following:

Child Support Enforcement Division

CHILD SUPPORT ENFORCEMENT DIVISION

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

ALLEGED FATHER'S FULL NAME: _____
SSN: _____ CASE NUMBER: _____
DATE OF BIRTH: _____ STATE OF BIRTH: _____
CHILD'S FULL NAME: _____
DATE OF BIRTH: _____ PLACE OF BIRTH: _____
MOTHER'S FULL NAME: _____
MOTHER'S MAIDEN NAME: _____
PHYSICAL CUSTODIAN: _____

NOTICE OF PARENTAL RESPONSIBILITY

TO THE ABOVE NAMED ALLEGED FATHER:

The Child Support Enforcement Division (CSED) alleges you are the natural father of the above named child.

You are entitled to a hearing to determine if there is reason to believe you may be the child's biological father. **The only purpose of this hearing is to determine if you will be ordered to take a genetic blood test. The hearing is not a paternity trial.** If you had sexual intercourse with the child's mother around the likely time of conception, there is reason to believe you could be the biological father. If reasonable cause is found to exist, you will be compelled to take a genetic blood test. The likely date or period in which conception occurred was: _____. Conception likely occurred in _____ County, State of _____.

YOUR OPTIONS

1. **If you agree you are the child's father**, you can avoid having to submit to blood tests by completing the attached Admission of Paternity, and signing it in front of a Notary Public. Send the signed Admission to the Investigator at the address listed above within twenty (20) days. After receiving the Admission form, the CSED will enter a final order establishing the parent-child relationship.
2. **If you are not the child's father, or if you are unsure:**
 - a. You can resolve this matter without a hearing by signing the attached Consent to Blood Test. Send it to the Investigator at the address listed above.
 - OR**
 - b. You can request a hearing by signing the attached Denial of Paternity. You must send it to the CSED Hearings Office. It must arrive within twenty (20) days of the date you received this notice. The CSED will tell you in writing of the date, time and place of the hearing.

3. The CSED will dismiss the case against you if the blood test results exclude you as the natural father.
4. If the test results show a 95% or greater chance you are the father you must pay the cost of blood tests. The blood tests cost \$83 per person (for yourself, the mother, and each child tested) or the actual cost of testing, if you request additional testing.

Date: _____

Telephone: _____

Investigator, Child Support Enforcement

EFFECT OF FAILURE TO RESPOND/APPEAR

The CSED Hearing Officer will issue an order declaring you to be the child's legal father if:

- you do not return either the **Admission of Paternity, Consent to Blood Test, or Denial of Paternity** within the twenty (20) day period; or,
- if you fail to appear at the hearing; or,
- if you fail to appear at the time and place of the blood test and have a blood sample drawn.

The Hearing Officer can enter the order without further notice to you. The order will take effect within ten (10) days unless you show good cause for your failure.

HOW THE CSED DECIDED THAT YOU MAY BE THE CHILD'S FATHER

The CSED issued this Notice on the basis of the information checked below:

- ☐ The child's natural mother filed a signed and sworn statement naming you as the child's natural father.
- ☐ A person other than the natural mother identified you as the natural father. Further CSED investigation revealed information which supports the belief that you may be the natural father of the child.
- ☐ You are a presumed father under Montana law.

EFFECT OF BLOOD TEST RESULTS

If the test results show a 95% or greater chance that you are the child's natural father, the law imposes the duties of legal father upon you. This imposition of duties is not final unless the CSED or a District Court issues an order establishing paternity. If you think the blood test results are wrong, you may file a written request with the CSED to have your case sent to a Montana District Court for trial, pursuant to MCA § 40-5-236. Although it would be in your interest to hire an attorney for this trial, the CSED will not reimburse you for your costs associated with requesting a District Court trial.

THE EFFECT OF PATERNITY ESTABLISHMENT

A CSED order finally establishes the parent-child relationship for all purposes. The law then imposes on you all parental rights and duties. These include the duty to pay support and to get and keep health insurance for the child. The State of Montana can also add your name to the child's birth certificate if the child was born in Montana.

LEGAL BASIS OF THIS NOTICE

The CSED can establish the paternity of children under MCA Sections 40-5-231 through 40-5-237. MCA Sections 40-6-105 and 40-5-234 create presumptions of paternity. Administrative fair hearings are "contested cases" under the Montana Administrative Procedures Act. The rules of the CSED, as published in the Administrative Rules of Montana, also apply.

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
ESTABLISHING PATERNITY

subject:
Notice of Parental
Responsibility--Multiple-
Allegation Cases

SUPERSEDES: CS 605.3, Notice of Parental Responsibility--Multiple-Allegation Cases, September 30, 1995.

REFERENCES: Sections 40-5-231 through 40-5-237, and 40-6-101 through 40-6-118, MCA; Rule 301, Montana Rules of Evidence

POLICY: Applicability. Procedures in this section apply when the following conditions are met:

- (1) The case meets the definition of a multiple-allegation, unresolved paternity case given in section CS 602.1

REMINDER: In cases where all other possible fathers have been excluded by genetic testing, the case is treated as a single-allegation case, and procedures in section CS 605.2 apply.

- (2) The CSED can assert personal jurisdiction over the alleged or presumed father
- (3) In the determination of the caseworker there is reasonable cause to proceed with the contested case against the alleged or presumed father
- (4) The CSED has taken the appropriate case initiation steps under section CS 602.1, including obtaining birth records and mother's information; entering case information on SEARCHS; and, except in special situations, contacting the alleged or presumed father and giving him an opportunity to resolve paternity voluntarily.

Processing Multiple-Allegation Contested Cases. Generally, the CSED applies the same policies and procedures to multiple-allegation "contested" cases (those involving a Notice of Parental Responsibility) as to single-allegation contested cases. These policies and procedures are given in section CS 605.2 (Notice of Parental Responsibility--Single-Allegation Cases), and are referenced throughout this section. The purpose of this section, however, is to identify the points at which multiple-allegation cases are treated differently from single-allegation cases, and to give the special procedures that apply.

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As in case initiation (see section CS 602.1) the caseworker follows the procedures in this section for **each** alleged or presumed father. Processing of multiple allegations usually proceeds concurrently, although the CSED may, at the caseworker's discretion, wait to take the next step on one allegation in anticipation of paternity being resolved by actions on another. **Any determination not to proceed immediately to the next step for a given allegation must take into account the federal time frames within which paternity and the resulting support order must be established.** See section CS 605.2 for specific guidance and requirements.

Differences from Single-Allegation Processing. There are seven main differences between single- and multiple-allegation case processing:

- (1) No "Default" Option. When an alleged or presumed father fails to respond to a Notice of Parental Responsibility (NPR); fails to appear for a scheduled NPR hearing; or fails to appear for genetic testing after being ordered by the CSED to do so, the CSED **cannot** enter a default order establishing paternity against that man. There are, however, other options available to the CSED to force the alleged/presumed father into testing through increasingly stronger actions (see PROCEDURES). Genetic testing results, in turn, give the CSED the necessary authority to either establish paternity against the man or to exclude him.
- (2) Admission of Paternity Not Acceptable. As in case initiation procedures the CSED will not act on an Admission of Paternity and Application for Paternity Consent Order in a multiple-allegation case unless the Admission (a) is supported by positive genetic testing results, or by the exclusion by genetic testing of all other possible fathers, and (b) includes language recognizing there are other allegations in the case.
- (3) Additional Issue at Hearing. The issue of whether there is a reasonable probability of a **presumption** may be determined at hearing.

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This determination may be used--in addition to, or in the absence of, a determination of reasonable probability of sexual intercourse--as a basis for ordering genetic testing.

- (4) Less Occasion for Concurrent Processes. Because the paternity default process does not apply, and the paternity consent process applies only after genetic testing is completed, in most multiple-allegation cases the caseworker must wait for formal resolution of paternity before proceeding on the alleged/presumed father's response to the NOCS.
- (5) SEARCHS Processing. SEARCHS processing remains the same as for single-allegation cases except with respect to system document generation: some of the forms used in contested case processing are automatically generated in their single-allegation versions if the caseworker does not actively select the multiple-allegation option.
- (6) Exclusion Not a "Cooperation" Issue. When an alleged or presumed father is excluded by genetic testing in a multiple-allegation case, the CSED does not contact the mother for names of other possible fathers, but simply proceeds to work the remaining allegations.
- (7) Reduction to Single-Allegation Case. Because in a single-allegation case the CSED can establish paternity by methods other than genetic testing (default, Admission, or statutory presumption), exclusion of all allegations but one in a multiple-allegation case serves to advance the case toward establishment for the remaining (non-tested) man. When a multiple-allegation case becomes a single-allegation case, procedures revert to those given in section CS 605.2.

As stated in section CS 602.1, the RULES on the following page summarize the paths by which the CSED can establish paternity in multiple-allegation cases. These RULES are the basis for the procedural differences described above.

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RULES FOR RESOLVING PATERNITY IN MULTIPLE-ALLEGATION CASES

The following RULES assume genetic testing will result in either a presumption (positive results) or an exclusion (negative results). The rules also assume it will be impossible to obtain positive genetic testing results for more than one man in a case. If either assumption should prove false, consult your CSED staff attorney.

RULE 1: The CSED will enter a Paternity Consent Order if either of the following applies:

- (1) An AF or PF signs an Admission of Paternity (multiple-allegation version) AND the same AF or PF genetically tests positive (if there are other PFs, the order should include language overcoming the other presumptions)
- (2) An AF or PF signs an Admission of Paternity (multiple-allegation version) but does not undergo genetic testing, AND all other AFs and PFs are excluded by genetic testing.*

RULE 2: If RULE 1 does not apply, the CSED will proceed with establishment of a support order (without entering a paternity order) if either of the following applies:

- (1) An AF or PF genetically tests positive
- (2) One PF in the case does not undergo genetic testing AND all other AFs and PFs are excluded by genetic testing.*

RULE 3: The CSED will enter a Paternity Default Order for an AF or PF only if default conditions (failure to respond to notice or appear as ordered) apply AND all other AFs and PFs are excluded by genetic testing.*

RULE 4: The CSED will proceed with establishment of a support order (without entering a paternity order) for an AF or PF who is declared father by the judicial or administrative paternity order of another state. This RULE is superior to RULES 1, 2, and 3.

* In highly unusual cases where genetic testing is not available to exclude an AF or PF, it may be possible to exclude the AF or PF by an action in district court or--upon a determination by the CSED staff attorney based on the facts of the case--to proceed as if the AF or PF were excluded.

AF = alleged father (no presumption)

PF = presumed father (per CSED definition of "presumption")

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PROCEDURES

Except where otherwise noted the following procedures apply to the same man from beginning to end.

RESPONSIBILITY	ACTION
Caseworker	1. Takes following actions as in section CS 605.2: a. Determines whether combined NPR-NOCS package is appropriate. b. Prepares and issues NPR-NOCS or NPR package. (NOTE: Documents in package differ from those in single-allegation package as follows: > NPR must be multiple-allegation version > Admission of Paternity and Application for Paternity Consent Order is not included.) c. Obtains service of notice package. d. Where NPR-NOCS package issued, follows applicable procedures in section CS 401.3 relating to mother or third-party custodian. 2. Takes action corresponding to alleged/presumed father's timely response to NPR as follows: (NOTES in section CS 605.2 regarding "timely response" and "responder's intent" apply here as well.) a. If alleged/presumed father does not contact CSED, or contacts CSED but does not follow with action appropriate to NPR, follows procedures in section CS 606.3 for preparing and forwarding to OALJ form CS-606.3A, Affidavit and Motion for Genetic Testing Hearing; proceeds to step 8. b. If alleged/presumed father returns signed Consent to Genetic Testing, or contacts CSED and orally agrees to genetic testing, or returns signed Statement Concerning Paternity (or equivalent document) requesting hearing, or contacts

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CS6D and proves he could not be child's father, proceeds as in section CS 605.2. (If hearing requested, see step 7, this section, for issue at hearing.) **Returns to this section if at any time a situation occurs that, in a single-allegation case, would constitute a default for this alleged or presumed father, and proceeds as follows:**

- If alleged/presumed father fails to appear for hearing to determine whether he should be ordered to submit to genetic testing, proceeds to step 10a.
 - If alleged/presumed father fails to appear for genetic testing after being ordered to do so by Genetic Testing Subpoena or by order following Consent to Genetic Testing, proceeds to step 14.
3. If at any point in these procedures the multiple-allegation case becomes a single-allegation case against this
- **alleged father**, proceeds to appropriate step in section CS 605.2 and continues contested case processing as directed.
 - **presumed father**, updates SEARCHS via CHL screen to show date and method of paternity establishment, and proceeds with NOCS case as in step 4.

If at any point in these procedures a presumed father timely withdraws a paternity acknowledgment (see section CS 602.1, DEFINITIONS--Presumption), proceeds for that man as for an alleged father.

4. Upon resolution of paternity, takes action in section CS 401.3 according to alleged/presumed father's timely response to NOCS. (EXCEPTION in 605.2 for concurrent processes does not apply.) Coordinates NOCS actions with resolution of paternity as in NOTE after NOCS steps in 605.2.

Also, if NOCS hearing was requested in case

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but stayed by OALJ pending resolution of paternity (see step 5), proceeds as in section CS 605.2 to reactivate case with OALJ.

OALJ

5. Upon receipt of request for hearing on NOCS, checks SEARCHS to determine if paternity has been established. If so, proceeds with hearing actions in NOCS case as in section CS 401.3; if not, stays any action on hearing request until paternity is resolved, and advises caseworker NOCS hearing is stayed.
6. Upon receipt of Statement Concerning Paternity from alleged/presumed father requesting NPR hearing, proceeds as in section CS 605.2.
7. Upon receipt of properly completed Affidavit and Motion for Genetic Testing Hearing, proceeds as for hearing requested by alleged/presumed father, according to applicable procedures in section CS 605.2.

NOTE: Hearing Issue. The issue to be determined at hearing is the same as for a hearing requested by the alleged/presumed father, that is, whether there is either (1) a reasonable probability the alleged/presumed father could be the child's natural father, or (2) a probable existence of a presumption.

Caseworker

8. At all appropriate points during process of preparing case for hearing, attempts as in section CS 605.2 to persuade alleged/presumed father to participate voluntarily in genetic testing. If before hearing is held alleged/presumed father agrees to genetic testing, proceeds to schedule testing, attempt to obtain signed Consent to Genetic Testing, vacate or dismiss hearing if applicable, and monitor for appearance of parties as in section CS 605.2. If alleged/presumed father fails to appear for voluntary testing and he has
 - signed a Consent to Genetic Testing, proceeds to step 14.
 - not signed a Consent to Genetic Testing, reschedules hearing (if vacated) and proceeds to step 9.

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Allegation Cases

9. Attends prehearing conference, prepares case for hearing, attends and represents CSED at hearing, and requests judgment for testing costs as in section CS 605.2.
10. Upon receiving results of hearing takes action as follows:
 - a. If Hearing Officer has determined alleged/presumed father should be required to submit to genetic testing, or if alleged/presumed father failed to appear for hearing, schedules genetic testing as in section CS 605.2, and proceeds to step 11.
 - b. If Hearing Officer has determined there is no "reasonable-probability" basis for ordering genetic testing, dismisses NOCS as in section CS 401.3, updates SEARCHS (CHL and CAP screens) to exclude alleged/presumed father, and proceeds with other allegations in case. (NOTE: If after consultation with CSED staff attorney further action on **this** allegation appears warranted, pursues and obtains additional evidence, issues new NPR-NOCS, and returns to step 2.)

Caseworker and
OALJ

11. Issue Genetic Testing Subpoena according to procedures in section CS 605.2 (caseworker--prepares, submits to OALJ, secures service; OALJ--issues, returns to caseworker for service).

Caseworker

12. Monitors genetic testing appointments for appearance of parties as in section CS 605.2. If alleged/presumed father appears for testing, proceeds to step 13. If alleged/presumed father fails to appear for testing, proceeds to step 14.
13. Receives and processes testing results as in section CS 605.2, with following exceptions:
 - a. If genetic testing results are positive, includes in results package to father (along with other documents required in section CS 605.2) form CS-606.2A, Admission of Paternity and Application

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for Paternity Consent Order, **multiple allegation version** (accompanied by paternity information for parents information sheet, explaining rights, responsibilities, and consequences; information sheet may be omitted if previously sent to this man in same case). (NOTE: The single-allegation version of the Admission is not acceptable.)

- b. If genetic testing results are negative, does not require mother to provide names of other possible fathers, but instead proceeds (or continues) with appropriate steps for other allegations.
14. If alleged/presumed father fails to appear for testing after being ordered to appear by Genetic Testing Subpoena **or** by CSED Decision and Order following signed Consent to Genetic Testing, consults with CSED staff attorney to determine appropriate remedy; works with attorney in obtaining district court order or in taking other actions to compel submission.

NOTE: Perseverance Required. Unless or until **another** alleged/presumed father in the case genetically tests positive, it is essential to pursue testing of this man until a sample is obtained. This may involve administrative contempt procedures, license suspension, court-ordered physical enforcement by the sheriff, or any combination of these.

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Paternity Default Order

SUPERSEDES: CS 606.1, Paternity Default Order, September 30, 1995

REFERENCES: Sections 40-5-231 through 40-5-237, and 40-6-101 through 40-6-118, MCA.

POLICY: Applicability. The procedures in this section apply when the alleged father in a single-allegation paternity case "defaults" on a CSED order or notice by acting as described in one of the following situations:

- (1) The alleged father fails to timely respond to a properly served Notice of Parental Responsibility (NPR). To "respond" to an NPR the alleged father must either
 - return a signed Statement Concerning Paternity (or its equivalent) denying paternity and requesting a hearing, or
 - return a signed Consent to Genetic Testing agreeing to submit to genetic testing, waiving the right to hearing, and agreeing to entry of an order declaring paternity if he fails to submit to testing as agreed.
- (2) The alleged father fails to appear for a properly scheduled CSED hearing to determine whether there is reasonable probability he may be the natural father of the child.
- (3) The alleged father fails to submit to properly ordered genetic testing **and** there is reasonable cause to believe he may be the natural father of the child; failure to submit may be failure to appear for a properly scheduled drawing, or, upon appearance, failure to permit the drawing. The CSED may order genetic testing based on a signed Consent to Genetic Testing (with or without service of the NPR) or through a Genetic Testing Subpoena.

Procedures for properly serving the NPR, determining "timely response," scheduling a hearing, ordering genetic testing, scheduling the drawing for genetic testing, and determining reasonable cause are described in sections CS 605.2, CS 604.1, and CS 602.2.

Note that in a multiple-allegation case the concept

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of default does not apply (see section CS 605.3 for proceeding against an alleged/presumed father in one of the above situations in a multiple-allegation case); however, if an alleged father in a multiple-allegation case acts as in (1), (2), or (3) above **and** the case is later reduced to a single-allegation case by exclusion of all other allegations, the procedures in this section for entering a default then apply.

Effect of Paternity Default Order. When the conditions in the preceding paragraphs are met, the CSED will issue a Paternity Default Order. When this order is filed with a Montana district court it establishes paternity--the legal relationship of father and child--for all purposes in the same manner as if the matter had been decided by a jury following a district court trial. A properly filed default order is conclusive and, unlike a presumption of paternity, cannot be rebutted.

However, like a district court default judgment, this default order can be set aside under some circumstances. The basic circumstances for setting aside a CSED paternity default are as follows:

- (1) Excusable neglect--the alleged father shows a good, reasonable excuse for his default (for example, he was physically incapacitated at the time)
- (2) Fraud--the conditions for a default were fraudulently presented (for example, the child's mother concealed the existence of other possible fathers who had not been excluded by genetic testing, and the CSED proceeded with the default in the belief the case was a single-allegation case)
- (3) Lack of jurisdiction--the CSED did not have proper jurisdiction over the alleged father (for example, the alleged father resides out of state and has never been in the state, and the child was conceived out of state)
- (4) Improper or insufficient service--the CSED's notice, order, or subpoena was not served on the alleged father in accordance with applicable law; or, the CSED cannot document or prove proper service (for example, there is no sheriff's return in the file)
- (5) Prior judgment--the CSED entered a default

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without the knowledge that a court had previously decided the issue of paternity (the prior order takes precedence).

PROCEDURES

RESPONSIBILITY

ACTION

Caseworker

1. Upon identifying a situation where a paternity default would apply (see Applicability, POLICY), proceeds as follows:
 - a. If alleged father has failed to timely respond to Notice of Parental Responsibility (NPR), proceeds to step 2.
 - b. If alleged father has failed to submit to ordered genetic testing (by failing to appear for scheduled drawing, or appearing but failing to permit drawing), proceeds to step 3. (Note that if no CSED order was issued for genetic testing, failure to submit to agreed testing does not constitute a default under this step. However, a default under step 1a may still apply.)
 - c. If alleged father has failed to appear for hearing requested by him under section CS 605.2, proceeds to step 10. (Note that failure to appear for hearing requested by CSED under section CS 605.3 does not constitute default.)
2. Verifies case file contains documentation that NPR was properly served. If so, proceeds to step 5. If not, returns to section CS 605.2 and follows procedures for re-service of NPR and subsequent CSED actions.
Documentation: sheriff's return, certified mail receipt, or signed acknowledgment of service.
3. Verifies case file contains documentation as follows (all items):
 - (1) That CSED issued and properly served order for genetic testing.
Documentation: copy of decision and order contained in Consent to Genetic Testing, with certificate of mailing; or

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copy of Genetic Testing Subpoena with proof of personal service or acknowledgment.

(2) That CSED notified alleged father of date, time, and place of drawing.
Documentation: copy of Genetic Testing Subpoena or copy of Genetic Testing Scheduling Letter.

(3) That alleged father did not appear for, or did not permit, scheduled drawing.
Documentation: (none required--caseworker's sworn statement prepared in step 5 suffices).

(4) That there is reasonable cause to believe the alleged father is the natural father of the child.
Documentation: signed and notarized Paternity Affidavit from mother, or documentation showing other basis for reasonable cause as described in section CS 602.2.

If all of above documentation exists, proceeds to step 5. If not, returns to section CS 602.1 or 605.2, as appropriate, and recommences procedures as necessary.

Office of
Administrative
Law Judge
(OALJ)

4. Upon failure of alleged father to appear for hearing, and request by caseworker for entry of Paternity Default Order, verifies file contains documentation that CSED notified alleged father of hearing date, time, and place. If so, includes Paternity Default Order in order advising parties of results of hearing, and proceeds to step 7.
Documentation: copy of notice of hearing with certificate of mailing to alleged father's last known address.

Caseworker

5. Completes forms CS-606.1A, Application for Paternity Default Order and Paternity Default Order, and forwards to OALJ together with copy of certified birth certificate, copy of NPR (if issued), and any SEARCHS stuffers

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required. Selects appropriate language for amended or substitute birth certificate, if appropriate (see step 9).

OALJ

6. Upon receipt of application and order, issues Paternity Default Order.
7. Mails copies of Paternity Default Order to parties, including any third-party obligee, and sends copy to caseworker. Calendars for 10 working days plus 3 calendar days following date of mailing to alleged father.

NOTE: Effective Date of Paternity Default Order. A default order does not become effective until 10 days after the order is served on the alleged father. If the order is served by mail an additional 3 days is allowed. During this 10-to-13-day time span, if the alleged father can show "good cause" for his failure, the order is withdrawn and procedures will recommence at the appropriate step. "Good cause" is a determination made by the Hearing Officer on the facts of the case; it is generally a lesser standard than the "excusable neglect" standard necessary to set aside final orders and judgments.

8. If alleged father timely submits sworn statement claiming good cause for particular failure cited in Paternity Default Order, reviews statement and determines whether good cause should be granted. Prepares written determination accepting or denying claim of good cause; mails copy to alleged father, other parties, and caseworker. If good cause accepted, takes action as follows:
 - a. If default was for failure to respond to NPR or appear at hearing, sets or resets hearing date and proceeds as in section CS 605.2.
 - b. If default was for failure to submit to genetic testing ordered by Genetic Testing Subpoena, works with caseworker as in CS 605.2 to reschedule drawing for genetic testing and reissue and serve Genetic Testing Subpoena.
 - c. If default was for failure to submit to

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genetic testing ordered in Consent to Genetic Testing, directs caseworker to reschedule drawing for genetic testing and notify alleged father of date, time, and place.

If good cause denied, proceeds to step 9.

9. If child's birth records are located in Montana, files copy of Paternity Default Order with Montana Vital Statistics Bureau; upon request of mother or father, also orders Vital Statistics Bureau to prepare an amended or substitute birth certificate consistent with Paternity Default Order. (Requests "substitute" birth certificate if different man's name currently shown; requests "amended" birth certificate if no man's name currently shown.)

NOTE: No Change to Birth Records of Other State. The CSED will not file the Paternity Default Order in another state. If the child's birth records are located in another state, the child's mother or father may elect to file the order there independently. The CSED's failure to file the order in another state does not affect the validity or conclusiveness of the paternity determination.

- Caseworker
10. Upon receiving copy of issued Paternity Default Order from OALJ, performs necessary SEARCHS processing on CHL and CAP screens to establish alleged father as father; if applicable, notifies public assistance agency of paternity establishment. Proceeds to section CS 401.3, or resumes procedures begun in section CS 605.2, to establish support order.
 11. Upon being notified by OALJ of determination of good cause, follows appropriate procedures in sections CS 605.2 or 604.1 to allow alleged father opportunity to request or appear at hearing, or submit to genetic testing, as appropriate.

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

ALLEGED FATHER'S FULL NAME: _____
SSN: _____ CASE NUMBER: _____
DATE OF BIRTH: _____ STATE OF BIRTH: _____
CHILD'S FULL NAME: _____
MOTHER'S FULL NAME: _____
MOTHER'S MAIDEN NAME: _____

APPLICATION FOR PATERNITY DEFAULT ORDER

STATE OF MONTANA)
County of _____) :SS.

I, the undersigned, being first duly sworn on my oath, depose and say:

1. That I am a duly appointed and authorized representative of the Child Support Enforcement Division (CSED).
2. I examined the records kept in the usual course of CSED business about the above-named matter.
3. My investigation shows that there is good reason to believe that the alleged father is the natural father of the child.
4. The records show that the CSED issued a NOTICE OF PARENTAL RESPONSIBILITY to the alleged father named above. The CSED served the Notice on the alleged father according to the Montana Rules of Civil Procedure on _____.
5. The alleged father is in default because he is the only alleged father and/or any other alleged fathers have been excluded by blood testing or legal process, and because he:
☐ did not deny paternity within twenty (20) days from the date of service of the Notice; **OR**
☐ did not appear for a scheduled blood drawing.
6. MCA § 40-5-233 provides that, upon default, the CSED Hearing Officer may issue an order finally establishing the parent-child relationship.

7. I apply to the CSED Hearing Officer for entry of an order establishing the parent-child relationship between the named alleged father and child.
8. ☐ **If checked**, the Hearing Officer should order the Montana Department of Health and Environmental Sciences, Vital Records and Statistics Bureau:
- ☐ to amend the birth certificate to show a parent-child relationship between the alleged father and child.
- ☐ to prepare a substitute birth certificate showing the alleged father as the child's legal father.
9. ☐ **If checked**, the Hearing Officer should order the alleged father to pay the CSED \$83.00 per person, for a total of \$_____, for the costs of blood testing as requested in the Notice of Parental Responsibility.

Child Support Enforcement Division

SUBSCRIBED AND SWORN TO before me, a Notary Public for the State of Montana on the date written above.

(SEAL)

Notary Public for the State of Montana

Residing at: _____

My Commission Expires: _____

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

IN THE MATTER OF THE PATERNITY OF: _____
(Child's Full Name)

FATHER'S FULL NAME: _____

CUSTODIAN: _____ CASE NUMBER: _____

PATERNITY DEFAULT ORDER

UPON the application of the Child Support Enforcement Division (CSED), and the record in this matter, the Hearing Officer makes the following:

FINDINGS OF FACT

1. _____ gave birth to the child named above on _____. The birth occurred in _____ County, State of _____. Conception occurred in the State of _____.
2. The CSED is providing services for the child under Title IV-D of the Social Security Act and Montana law.
3. _____ has been named as the child's natural father. He was born on _____ in the State of _____. The child has no presumed father who has not been excluded by genetic blood testing or other legal process.
4. Investigation by the CSED showed that there is reason to believe that the father may be the child's natural father.
5. The CSED issued a NOTICE OF PARENTAL RESPONSIBILITY, alleging that the father is the child's natural father.
6. The NOTICE was served upon the father in accordance with Montana law.
7. The father failed to:
 - ☐ timely deny the allegation of paternity.
 - ☐ undergo paternity blood testing as ordered.
8. All other alleged fathers, if any, have been excluded by the results of genetic blood testing.
9. ☐ If checked, the child is entitled to ☐ an amended ☐ a substitute birth certificate naming the father as the child's legal father.

CONCLUSIONS OF LAW

1. The CSED has jurisdiction in this matter under the authority of MCA § 40-5-231.
2. There is reasonable cause to believe that the father is the child's natural father.
3. The father is in default, which constitutes an admission that the facts alleged in the NOTICE OF PARENTAL RESPONSIBILITY are true and correct.

PLEASE SEE OTHER SIDE

CS-606.1B
(Rev. 7/92)

4. A default order should be entered which establishes the legal existence of the parent and child relationship between the father and the child.
5. ☐ If checked, ☐ an amended ☐ a substitute birth certificate may be issued which shows the father as the child's legal father, in accordance with MCA § 40-5-235.
6. The CSED is entitled to a judgment for the costs of blood testing pursuant to MCA 40-5-210 and the regulations adopted thereunder.

DECISION AND ORDER

It is hereby ordered:

1. The legal relationship of father and child is established between _____ and _____; and,
2. ☐ If checked, the Montana Department of Health and Environmental Sciences, Vital Records and Statistics Bureau, is ordered to amend the birth certificate consistent with this order.
3. ☐ If checked, the Montana Department of Health and Environmental Sciences, Vital Records and Statistics Bureau, is ordered to prepare a substitute birth certificate consistent with this order.
4. ☐ If checked, the father shall pay the CSED \$83.00 per person, for a total of \$_____, for the cost of blood tests as requested in the Notice of Parental Responsibility.

Dated this _____ day of _____, 19_____.

HEARING OFFICER

Child Support Enforcement Division

NOTICE TO THE FATHER: This order will be final ten (10) days after the above date, unless you file a sworn statement with the CSED Hearing Office. It must state a good reason why the Hearing Officer should excuse your failure to:

- ☐ timely deny the allegation of paternity.
- ☐ undergo paternity blood testing as ordered.

A final order is subject to district court review under MCA § 40-5-253 and MCA Title 2, Chapter 4, Part 7.

CERTIFICATE OF MAILING

This is to certify that I, one of the legal unit administrative staff, deposited in the regular U.S. Mail, postage prepaid on _____, a true and correct copy of the foregoing Paternity Default Order to the following:

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

ALLEGED FATHER'S FULL NAME: _____
SSN: _____ CASE NUMBER: _____
DATE OF BIRTH: _____ STATE OF BIRTH: _____
CHILD'S FULL NAME: _____
DATE OF BIRTH: _____ PLACE OF BIRTH: _____
MOTHER'S FULL NAME: _____
SSN: _____ MOTHER'S MAIDEN NAME: _____

ADMISSION OF PATERNITY

STATE OF _____)
County of _____) SS.
County Where Notarized

First being duly sworn, and upon my oath, I, the father named above, admit the following:

1. I am the natural father of the child named above.
2. To the best of my knowledge and belief, the above information is true and correct.
3. I read and understood the statement of rights on the reverse, and I give up those rights.
4. I am not intoxicated or suffering from any mental or emotional condition which would keep me from making this admission.
5. I make this admission freely and it is in my best interest to do so.
6. I understand that I may not later withdraw this admission.
7. If a genetic blood test was previously conducted at Child Support Enforcement Division (CSED) expense, I agree to entry of an order granting the CSED judgment for:
☐ \$83 per person (for myself, mother, and child tested)
☐ \$ _____ The actual cost of blood tests because I requested additional testing.

Date

Father's Signature

SUBSCRIBED AND SWORN to before me, a Notary Public for this State, on the day, month and year written above.

(SEAL)

NOTARY PUBLIC

Residing at: _____

My Commission Expires: _____

STATEMENT OF RIGHTS

In any action by the CSED to establish a parent-child relationship, you have certain rights under Montana law. These may include:

1. You have the right to receive notice from the CSED of its intent to establish a parent-child relationship.
2. You have the right to an administrative fair hearing to determine if there is reason to believe that you may be the child's natural father. The only purpose of the hearing is to determine if you will be ordered to take a genetic blood test. The hearing is not a paternity trial. If you had sexual intercourse with the child's mother around the likely time of conception, there is reason to believe you could be the biological father. If reasonable cause is found to exist, you will be ordered to take a genetic blood test. At the hearing, you would have the right to:
 - a. testify, present evidence, and have witnesses testify on your behalf.
 - b. object to CSED exhibits and evidence and to cross-examine CSED witnesses.
 - c. have the CSED prove there is reason to believe that you may be the natural father.
3. By signing the Admission of Paternity, you are giving up your right to an administrative fair hearing. You are also giving up your right to a District Court trial.
4. You have the right to hire an attorney to represent and advise you. If you sign the Admission of Paternity and have not consulted an attorney, you give up this right when you sign the Admission of Paternity.
5. You have a right to genetic blood testing to see if you are the child's natural father. If you have not already had a genetic blood test, you give up this right when you sign the Admission of Paternity. If blood tests have already been completed, by signing this admission you are agreeing to repay the CSED the cost of the testing.
6. If you sign the Admission of Paternity, a court or administrative agency may later order you to provide support and health insurance for the child. If you do not pay ordered support, you may face civil or criminal penalties. These penalties may include jail time.
7. In this action to establish the parent-child relationship, the CSED cannot determine your custody and visitation rights. Only a District Court can define those rights.

HOW TO FILE THIS ADMISSION OF PATERNITY

If you admit that you are the child's father, complete and sign this form in front of a Notary Public. Return it to the CSED at the address at the top of the previous page within twenty (20) days of when you receive it.

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

ALLEGED FATHER'S FULL NAME: _____
CHILD'S FULL NAME: _____
MOTHER'S FULL NAME: _____
MAIDEN NAME: _____ CASE NUMBER: _____

STATEMENT CONCERNING PATERNITY

I, the alleged father ☐ **DENY** ☐ **AM UNSURE** that I am the biological father of the child named above.
My reason(s) for stating this is: _____

- ☐ **I agree to take a blood test.** (If you check this box, read, complete and sign the "Consent to Blood Test" form and return it to the address listed on that form. If you return the "Consent to Blood Test" form, it is not necessary to return **this** form.)
- ☐ **I request a hearing to determine if I should be ordered to take a blood test.** (If you check this box, read, complete and sign this form and return it to the Hearings Office at the address on the other side within 20 days of receiving the Notice of Parental Responsibility.)

**DENIAL OF PATERNITY
AND REQUEST FOR HEARING**

If you deny paternity, you can be compelled to submit to genetic blood testing. The genetic blood testing will either exclude or include you as a possible father of the child. If the test results show a 95% or greater chance that you are the child's natural father, the law imposes the duties of legal father upon you and CSED will seek to recover the cost of blood tests from you.

Before you can be compelled to submit to genetic blood testing, you are entitled to an administrative hearing. **The only purpose of the hearing is to determine if you will be ordered to take a genetic blood test. The hearing is not a paternity trial.** If you had sexual intercourse with the child's mother around the likely time of conception, there is reason to believe you could be the biological father. If reasonable cause is found to exist, you will be ordered to take a genetic blood test. At the hearing, you will have an opportunity to show why you could not be the child's father.

COMPLETE IF YOU REQUESTED A HEARING

Alleged Father's Signature _____	Date _____
SSN: _____	Phone No: _____
Address: _____	Contact Phone No.: _____

At the hearing, I will be represented/accompanied by:

Name: _____	Address: _____
Phone Number: _____	_____

This person: _____ is an attorney _____ is not an attorney

I will have my attorney submit a notice of representation to the CSED Hearings Office. I understand all correspondence pertaining to the hearing will be sent directly to me until my attorney has submitted the notice of representation.

Informal discussions with the Child Support Enforcement Division (CSED) and/or any other person about this case will NOT EXTEND THE TIME ALLOWED to file this Denial of Paternity.

IMPORTANT INFORMATION

Facts which may affect your hearing rights are below. **(PLEASE READ CAREFULLY)**

1. The CSED Hearings Office must receive your written Denial of Paternity within twenty (20) days after the date you received the Notice of Parental Responsibility. If it does not, the CSED Hearing Officer will enter an order finally declaring you to be the child's legal father. This will happen without further notice to you.
2. The Denial of Paternity must include your name, social security number, current address, and telephone number. The Hearing Officer will conduct the hearing by telephone. If you do not have a telephone, you must provide a number where the Hearing Officer can reach you for the hearing. This may be the number of a neighbor, friend, relative, employer or other person.
3. The Hearing Officer will decide if there is reason to believe you may be the child's father. If you had sexual intercourse with the child's mother around the likely time of conception, there is reason to believe you could be the biological father. The Hearing Officer cannot decide issues of visitation or custody.
4. The Hearings Office will inform you of the time for the hearing. The Hearings Office will mail a hearing notice to the address you provide. The Hearings Office will mail other hearing papers to the same address. You must keep the Hearings Office informed of any change(s) in your address.
5. You will receive additional information about telephone hearing procedures.
6. You have the right to appear by yourself or with an attorney, or may have an attorney appear for you. If you hire an attorney, it is your responsibility to pay any fee(s) charged for such representation.

HOW TO FILE THIS DENIAL OF PATERNITY

Complete and sign this form and return it to the CSED at the following address:

**Office of the Administrative Law Judge
111 North Jackson
Helena, Montana 59620**

FOR CSED USE ONLY

DATE OF SERVICE: _____ INVESTIGATOR: _____
REGION/COUNTY: _____ EXHIBITS DUE: _____

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

FATHER'S FULL NAME: _____ SSN: _____
CHILD'S FULL NAME: _____
MOTHER'S FULL NAME: _____
MAIDEN NAME: _____ CASE NUMBER: _____
CUSTODIAN: _____

DECLARATION OF INFORMED CONSENT

TO THE FATHER NAMED ABOVE:

You should know that one or more other men have been named as possible fathers of the child(ren) named above. If you still want to be declared the legal father of the child(ren) you must read and sign this Declaration of Informed Consent in front of a Notary Public and return it and the Admission of Paternity to the Child Support Enforcement Division (CSED).

STATE OF _____)
County of _____) :SS.

First being duly sworn, and upon my oath, I, the father named above, having been informed that another man or men have been named as possible fathers, admit the following:

1. I wish to be declared the legal father of the above-named child(ren).
2. I am not intoxicated or suffering from any mental or emotional condition which would keep me from giving my consent voluntarily.
3. I give this consent freely and it is in my best interest and the best interest of the child to do so.

Date

Father's Signature

SUBSCRIBED AND SWORN to before me, a Notary Public for this State, on the day, month and year written above.

(SEAL)

NOTARY PUBLIC
Residing at: _____
My Commission Expires: _____

IMPORTANT INFORMATION

TO THE FATHER NAMED ABOVE:

An ADMISSION OF PATERNITY usually results in a final order establishing the legal relationship of father and child. However, if more than one man has been named as a possible father, the CSED will not act on the Admission of Paternity until this Declaration of Informed Consent has been reviewed and signed by the man admitting paternity. This is to protect the rights of the father and the child.

You should know that one or more other men have been named as a possible father of the child named above. When this occurs you have the following options:

1. You may sign this Declaration of Informed Consent and the CSED will enter a final order declaring you the legal father of the child named above.

OR

2. You may conditionally withdraw your Admission of Paternity. Should you elect to do so, you may voluntarily submit to genetic blood testing. Further action will depend on the blood test results as follows:
 - Should this test indicate a 95% or greater chance that you are the natural father of the child named above, the CSED will accept your Admission of Paternity and enter a final order naming you the legal father of the child named above.
 - Should the test exclude you as the natural father, the CSED will not accept your Admission of Paternity. The Admission will be returned to you.
 - Should the test indicate less than 95% chance of paternity, the CSED will proceed with our investigation which may result in a trial to determine paternity.

If you conditionally withdraw your Admission of Paternity but do not voluntarily submit to genetic blood testing, the CSED may take steps to compel you to submit to the testing.

**STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION**

IN THE MATTER OF THE PATERNITY OF: _____
(Child's Full Name)

FATHER'S FULL NAME: _____

CUSTODIAN: _____ CASE NUMBER: _____

PATERNITY CONSENT ORDER

UPON the request of the Child Support Enforcement Division (CSED), and the record in this matter, the Hearing Officer makes the following:

FINDINGS OF FACT

1. _____ gave birth to the child named above on _____
_____. The birth occurred in _____ County,
State of _____. Conception occurred in the State of _____.
2. The CSED is providing services for the child under Title IV-D of the Social Security Act and Montana law.
3. _____ has been named as the child's natural father. He was born on _____ in the State of _____. The child has no presumed father who has not been excluded by genetic blood testing or other legal process.
4. The father signed an ADMISSION OF PATERNITY as provided by MCA § 40-5-232(3).
☐ **if checked**, there are no other alleged fathers who have not been excluded by genetic blood testing or other legal process; or
☐ **if checked**, the alleged father has signed a DECLARATION OF INFORMED CONSENT.
5. Investigation by the CSED showed there is reason to believe that the father may be the child's natural father.
6. The record shows the CSED has met all requirements of Montana and federal laws and regulations, and has complied with its own policies and procedures.
7. ☐ **If checked**, the child is entitled to ☐ **an amended** ☐ **a substitute** birth certificate naming the father as the child's legal father.
8. ☐ **If checked**, blood tests were conducted and the father has agreed to entry of a order granting the CSED judgment of:
☐ \$83.00 per person for blood test costs.
☐ \$_____ for the actual costs of blood testing.

SEE OTHER SIDE

CS606.2D
(Rev. 7/92)

CONCLUSIONS OF LAW

1. The CSED has jurisdiction in this matter under the authority of MCA § 40-5-231.
2. There is reasonable cause to believe that the father is the child's natural father.
3. An order should be entered which establishes the legal existence of the parent and child relationship between the father and the child.
4. ☐ **If checked**, ☐ **an amended** ☐ **a substitute** birth certificate may be issued which shows the father as the child's legal father, in accordance with MCA § 40-5-235.
5. The CSED is entitled to a judgment for cost of blood testing pursuant to MCA 40-5-210 and the regulations adopted thereunder.

DECISION AND ORDER

1. The legal relationship of father and child is established between _____ and _____; and,
2. ☐ **If checked**, the Montana Department of Health and Environmental Sciences, Vital Records and Statistics Bureau, is ordered to amend the birth certificate consistent with this order.
3. ☐ **If checked**, the Montana Department of Health and Environmental Sciences, Vital Records and Statistics Bureau, is ordered to prepare a substitute birth certificate consistent with this order.
4. ☐ **If checked**, the father shall pay the CSED for the cost of blood tests as requested in the Notice of Parental Responsibility.
 - ☐ \$83.00 per person for a total of \$_____.
 - ☐ \$_____ for the actual cost of testing.

Dated this _____ day of _____, 19_____.

HEARING OFFICER
Child Support Enforcement Division

CERTIFICATE OF MAILING

This is to certify that I, one of the legal unit administrative staff, deposited in the regular U.S. Mail, postage prepaid on _____, a true and correct copy of the foregoing Paternity Consent Order to the following:

Manual Pages

New manual pages are being prepared updating paternity establishment procedures to correspond with SEARCHS forms. Until then, please refer to the Paternity Forms Summary for the proper use of the new forms.

Instructions for Manual Maintenance

Place this Bulletin, with the attached Paternity Forms Summary, at the beginning of sections CS 600-608, Paternity Establishment, in your Manual. Retain the Paternity Bulletin dated April 14, 1992.

Update the Table of Contents by adding "Paternity Forms Bulletin (3/5/93) pp 1-7" immediately after the heading "Paternity Establishment--General" on page 7.

Changes to sections CS 601-606:

- Insert each enclosed SEARCHS form at the end of the appropriate Manual subsection (for example, insert form CS-605.2C at the end of subsection 605.2).
- On each Manual page picturing a paternity form, strike through the form and note the SEARCHS replacement form by number and date (refer to the Paternity Forms Summary for replacement information). EXCEPTION: Do not strike through the current (6/91) Paternity Affidavit; the SEARCHS "replacement" is the same form.

Attachment

THE UNIVERSITY OF CHICAGO

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Paternity Forms Summary

**SEARCHS
Stage**

Form Number

Form Name--Use

2	CS-601.1F (7/92)	Blood Test Scheduling Letter to Alleged Father--A regional office letter, "elevated" to official form status by SEARCHS User Group. New form.
2	CS-601.1M (7/92)	Blood Test Scheduling Letter to Mother and Child--Also a former regional office letter. New form.
1	CS-602.1A (7/92)	Letter to Mother--Sent to the custodian (if the custodian is the mother) along with the paternity affidavit and two copies of "Admission of Paternity" forms. Replaces CS-602.1A (9/90), no change.
1	CS-602.1B (7/92)	Letter to Alleged Father (AF)--Sent to the AF in "simple" paternity cases, i.e., mom is the custodian and AF is the only man named as dad. Replaces CS-602.1B (9/90), no change.
1	CS-602.1C (6/91)	Paternity Affidavit. Current form.
1	CS-602.1D (7/92)	Letter to Vital Statistics (VS)--Sent to VS to ensure that CSED has all available information regarding the birth of the child. (May discover that the AF or some other man has signed an Acknowledgement of Paternity.) Prevents errors in names--moms sometimes use different names for the same child--and ensures match between our abstract directing VS to amend or substitute a father's name on birth certificate and the original birth certificate. Can be used as a locate tool to discover the social security number of the mother or father. Replaces CS-602.1D (11/91), minor change.
1	CS-602.1M (7/92)	Letter to Alleged Father--Sent to the AF in multiple allegation cases. New form.
1	CS-602.1T (7/92)	Letter to Alleged Father--Sent to the AF in cases where a third party has custody of the child. Also used in incoming interstate cases. New form.

Paternity Forms Summary, page 2

SEARCHS

<u>Stage</u>	<u>Form Number</u>	<u>Form Name--Use</u>
1	CS-602.1TM (7/92)	Letter to Alleged Father--Sent to the AF in multiple allegation cases when a third party has custody of the child. New form.
1	CS-605.2A (7/92)	Notice of Parental Responsibility--Served on the AF, along with the following forms: Admission of Paternity, Consent to Blood Test, and Statement Concerning Paternity (Denial of Paternity and Request for Hearing). Includes complete information needed by Vital Statistics. Replaces CS-605.2A (4/91), minor change.
1	CS-605.2B (7/92)	Blood Test Subpoena--Issued to the AF when the Hearing Officer rules, after a hearing, that there is reason to believe the AF could be the child's father. May also be issued to non cooperative mothers in third party custodian cases at the request of the caseworker--not as a conclusion to a hearing. Lists cost of blood testing as possible consequence of "no show". Replaces CS-605.2B (8/90), significant change.
2	CS-605.2C (7/92)	Motion and Order to Vacate/Dismiss Hearing Date--Completed by a caseworker when, after a hearing is scheduled, the parties either agree to submit to blood tests or have submitted to blood tests, or the Alleged Father files an Admission which the mother does not contest. New form.
1	CS-606.1A (7/92)	Application for Paternity Default Order--Includes complete information needed by Vital Statistics, as well as request for blood test costs and for amended or substitute birth certificate. Replaces CS-606.1A (2/91), significant change.
1	CS-606.1B (7/92)	Paternity Default Order--Includes complete information needed by Vital Statistics, as well as order for blood test costs and for amended or substitute birth certificate. Replaces CS-606.1B (8/90), significant change.

Paternity Forms Summary, page 3

SEARCHS

<u>Stage</u>	<u>Form Number</u>	<u>Form Name--Use</u>
1	CS-606.2A (7/92)	Admission of Paternity--Adds costs of previously conducted blood tests to the admission, entering a judgment. -- Sent to the mother if she is the custodian. She is to make the initial contact with the AF and ask him to sign an admission. -- Sent directly to the AF in third party cases. -- Sent to the AF along with the Declaration of Informed Consent in multiple allegation situations. -- Sent to the AF once he has taken blood tests and met the "presumed father" criteria. The Admission of Paternity is the basis for entry of a Paternity Consent Order. Replaces CS-606.2A (8/90), minor change.
1	CS-606.2B (7/92)	Statement Concerning Paternity (Denial of Paternity and Request for Hearing)--Sent to AF. Allows him to opt for blood tests or to deny paternity and request a hearing. Designed to try to alleviate requests for hearings based on the mistaken assumption that the hearing is to determine paternity. The only purpose of a hearing is to determine if the AF could be the father of the child and to subpoena blood tests. Replaces CS-606.2B (8/90), minor change.
2	CS-606.2C (7/92)	Declaration of Informed Consent--Sent to the AF in multiple allegation cases. A signed Admission of Paternity in a multiple allegation must be accompanied by a signed Declaration of Informed Consent. Replaces CS-606.2C (8/90), minor change.
1	CS-606.2D (7/92)	Paternity Consent Order--Entered when a properly executed Admission of Paternity is received. Includes, when applicable, reference to Declaration of Informed Consent, other excluded AFs, amended or substitute birth certificate, and blood test costs. Replaces CS-606.2D, significant change.

Paternity Forms Summary, page 4

SEARCHS

<u>Stage</u>	<u>Form Number</u>	<u>Form Name--Use</u>
1	CS-606.2E (7/92)	Application for Paternity Consent Order-- Includes, when applicable, reference to Declaration of Informed Consent, other excluded AFs, amended or substitute birth certificate, and blood test costs. Replaces CS-606.2E, significant change.
2	CS-606.2F (7/92)	Consent to Blood Test--Non-interstate version. New form: replaces both CS- 604.1A and CS-604.1B.
2	CS-606.2I (7/92)	Consent to Blood Test--Sent to AF in incoming interstate cases; used to recoup blood test costs. Can also be used in non- interstate cases to recover blood test costs. New form: replaces both CS- 604.1A and CS-604.1B.
1	CS-606.3A (7/92)	Affidavit and Motion for Blood Test Hearing --CSED uses to force blood test hearing when an AF "defaults" in a multiple allegation situation and we cannot, therefore, enter a default, or when the mother denies that the AF is the father and the AF hasn't requested a hearing. New form.
2	CS-606.4A (7/92)	Request for Referral to District Court--Sent to AF when he continues to deny paternity after blood test results show a 95% or greater probability of paternity. This form advises AF--now a presumed father-- of his right to have matter referred to district court for further proceedings. Form also advises of other law that applies upon referral to district court. New form.

Dated: April 14, 1992

PATERNITY BULLETIN

The following are required activities before processing a paternity case, during the processing stage, and after resolution of paternity.

Whenever a caseworker from the Child Support Enforcement Division (CSED) is in the initial stages of working a paternity case, they will always be required to request certified copy's of the "abstract" of the birth certificate and acknowledgement of paternity from Vital Statistics. Informational copies of the birth certificate are no longer sufficient. Many times the original birth certificate differs from the informational copy.

NOTE: Pursuant to Montana Code Annotated (M.C.A.) Section 50-15-105(4), the fact that a man is named on a birth certificate as distinguished from an acknowledgement of paternity, cannot be used as evidence of the man's paternity, unless the man and the child's mother were married to each other. See "Presumed Paternity" Child Support Enforcement Procedures Manual, Section 601.1.

NOTE: There is a substantial difference between a "substitute" and an "amended" birth certificate. Substitute birth certificates will no longer be requested except under the following condition:

- (1) when scientific evidence and or an administrative and or court order require CSED to change the birth certificate, i.e. (the name of the father on the certificate to another man).

In all other cases, when either the mother or father so request, the father's name will be added to the birth certificate amending the original birth certificate.

Supervisors need to improve quality control. All paternity actions shall be approved by a Supervisor, Team Leader, or Staff Attorney until you feel confident the caseworker knows exactly what should be done. This encompasses all Notices, to the completion of all related paternity forms, to the resolution of the entire process. If names, dates of birth, or any information on our docketed administrative abstract is different than the certified copies of birth records forwarded from Vital Statistics, they will send the abstract back to CSED without making any of the required changes.

A "central clearinghouse" for all paternity actions is established in Helena. From this point forward, copies of all Paternity Consent Orders, Paternity Default Orders, Admissions of Paternity, Acknowledgements of Paternity, and Blood Test results will be

kept in a "central clearinghouse". The caseworker needs to forward the original blood test results, if available, to the hearings office for filing in the "central clearinghouse". If the original is not available please send a copy. The hearing office will automatically file a copy of the docketed abstract in each appropriate file.

Regional offices may request documents from Vital Statistics. However, any documents forwarded to Vital Statistics will be handled by the "central clearinghouse". The clearinghouse is not responsible for quality control of the regional work. Obvious errors discovered by the clearinghouse and or Vital Statistics will be returned to the appropriate region for correction. The "central clearinghouse" will also ensure that Agency Legal Services" (ALS) gets the necessary appropriate documents to close their file.

CSED cannot change the child's name, birthdate, or the mother's name. If either of the parents would like that information changed and or corrected it is their responsibility to do so. However, it is our intent, when the parent/child relationship is established, that the fathers name be added to the birth certificate in every possible case. NOTE: IN ALL CASES IN WHICH THE FATHER VOLUNTARILY AGREES TO A BLOOD TEST, YOU SHOULD ATTEMPT TO GET THE ALLEGED FATHER TO SIGN THE "ADMISSION OF PATERNITY" FORM. THIS ALLOWS THE COMPLETION OF THE "PATERNITY CONSENT ORDER" THUS AUTHORIZING THE ADDITION OF THE FATHER'S NAME TO THE CERTIFICATE OF BIRTH. This supplements the entire process of establishing a parent/child relationship, ties up loose ends, and solves some of the problems for "outside" parties when they are researching parent/child relationships and the birth certificate does not reflect our efforts.

Department of Public Health and
Human Services

section:
ESTABLISHING PATERNITY

CHILD SUPPORT ENFORCEMENT

subject:
Paternity Consent Order

SUPERSEDES: CS 606.2, Paternity Consent Order, September 30, 1995

REFERENCES: Sections 40-5-231 through 40-5-237, and 40-6-101 through 40-6-118, MCA; Rule 301, Montana Rules of Evidence

POLICY: Applicability. Procedures in this section apply whenever the CSED receives a signed Admission of Paternity from an alleged or presumed father in a paternity case.

Effect of Paternity Consent Order. When the conditions given in these PROCEDURES for accepting an Admission of Paternity are met, the CSED will issue a Paternity Consent Order. When this order is filed with a Montana district court it establishes paternity--the legal relationship of father and child--for all purposes in the same manner as if the matter had been decided by a jury following a district court trial. A properly filed consent order is conclusive and, unlike a presumption of paternity, cannot be rebutted. It is binding on the alleged or presumed father who has signed the Admission of Paternity even if he is a minor.

Basis in Informed Consent. Although the consent order is conclusive, it may be set aside or invalidated by a reviewing court if it is shown the order was not based on the "informed consent" of the alleged/presumed father. In a paternity case there are two areas where the requirements of informed consent apply:

- (1) Period of conception--the alleged/presumed father must know or be informed of the child's probable period of conception or date of birth.
- (2) Other possible fathers--if applicable, the alleged/presumed father must know or be informed of the existence of other possible fathers in the case.

If the alleged/presumed father is not informed of the facts of the case in these areas, he may conclude erroneously he is the natural father. If,

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PATERNITY

subject: Genetic Testing

however, he is informed of the facts, he may then conclude he must, may, may not, or must not be the natural father. If he signs the Admission having this knowledge, a consent order may be entered based on his informed consent. (Of course, in multiple-allegation cases CSED policy requires positive genetic testing results, or exclusion of all other possible fathers, in addition to informed consent.)

PROCEDURES

RESPONSIBILITY	ACTION
Caseworker	1. Upon receipt of a completed, signed, and notarized Admission of Paternity and Application for Paternity Consent Order from an alleged or presumed father in a paternity case, verifies CSED has or can obtain jurisdiction in case. If so, proceeds to step 2; if not, refers case to other state as in section CS 605.2 and takes no further action in this section. (Note that in cases where a Notice of Parental Responsibility (NPR) has been served, the CSED should already have jurisdiction over the individual.) NOTE: <u>Older Versions of Admission Not Acceptable.</u> Admissions of Paternity sent to alleged or presumed fathers before July 1, 1997, do not contain the language required by current law, nor were they accompanied by the information on parents' rights and responsibilities that is now required. If a pre-July 1997 Admission is received, the caseworker should immediately send the alleged/presumed father the current form (accompanied by the required paternity information for parents information sheet), explaining the new form is now required, and requesting he complete and return the new form as soon as possible. 2. Upon verification of jurisdiction, checks paternity facts of case and proceeds as follows:

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PATERNITY**

subject: Genetic Testing

- a. In single-allegation case (except as noted below) proceeds to step 3.

EXCEPTION: If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the CSED requires the informed consent language contained in the "multiple-allegation" version of the Admission (see NOTE after step 2b(i)). Positive genetic testing results for the admitting man in this situation are not required; procedures--other than the testing requirement--in step 2b(i) apply.

- b. In multiple-allegation case proceeds as follows:

(Note that even though the CSED does not send an Admission form to an alleged or presumed father in a multiple-allegation case, the man may have received the Admission before the CSED was aware of other allegations.)

- i. If Admission is accompanied or preceded by positive genetic testing results, checks to make sure Admission received is multiple-allegation version. (If the EXCEPTION in step 2a applies and the admitting man did not undergo genetic testing, also checks to make sure Admission does not contain reference to positive genetic testing results.) If form is acceptable, proceeds to step 3; if not, prepares proper version of form CS-606.2A and sends to father, requesting he sign in front of notary and return. (In preparing new Admission, includes father's agreement to judgment for testing costs, if appropriate--see policy in section CS 604.1, Genetic Testing.) If proper version returned, proceeds to step 3; if not takes no further action in this section.

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PATERNITY**

subject: Genetic Testing

NOTE: "Multiple-Allegation" Version of Admission. This version of the Admission of Paternity contains a required declaration of informed consent stating the father knows that one or more other men were named as possible fathers.

- ii. If Admission is not accompanied or preceded by positive genetic testing results, explains to admitting man that, when there are other possible fathers, Admission is not acceptable unless supported by positive genetic testing results. Attempts to gain admitting man's agreement to testing and proceeds as in section CS 601.2 or 605.3 with next appropriate action in case. Returns to this section (step 2b(i), or 2a) if admitting man submits to testing and results are positive, or if all other allegations in case excluded by genetic testing.

3. Prepares form CS-606.2D, Paternity Consent Order, and forwards to Office of Administrative Law Judge (OALJ) together with
- original Admission of Paternity and Application for Paternity Consent Order (correct version),
 - certified copy of Certificate of Live Birth (if child born in Montana), and
 - any SEARCHS stuffers required.

In preparing Paternity Consent Order, ensures accuracy of language re: basis for any informed consent; any genetic testing results; any agreement to judgment for costs of testing; any request for amended or substitute birth certificate (see step 6); and, in a multiple-allegation case, status of other allegations in case, including effect of order in overcoming any other presumptions.

OALJ

4. Issues Paternity Consent Order, mails copy to alleged/presumed father at last known address; mails copies to mother, any third-party obligee, and other interested parties; and sends copy to caseworker.

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PATERNITY**

subject: Genetic Testing

[step 5 deleted]

6. If child's birth records are located in Montana, files copy of Paternity Consent Order with Montana Vital Statistics Bureau; also, if father's name not shown on birth certificate, orders Vital Statistics Bureau to prepare amended or substitute birth certificate consistent with Paternity Consent Order. (Requests "substitute" birth certificate if different man's name currently shown; requests "amended" birth certificate if no man's name currently shown.)

NOTE: No Change to Birth Records of Other State. The CSED will not file the Paternity Consent Order in another state. If the child's birth records are located in another state, the child's mother or father may elect to file the order there independently. The CSED's failure to file the order in another state does not affect the validity or conclusiveness of the paternity determination.

Caseworker

7. Upon receiving copy of Paternity Consent Order from OALJ, performs necessary SEARCHS processing on CHL and CAP screens to establish alleged father as father; also, if applicable, enters SEARCHS case note for consent order issued with fees, setting up fee account as in section CS 604.1. If applicable, notifies public assistance agency of paternity establishment. Proceeds to section CS 401.3, or resumes procedures begun in section CS 605.2, to establish support order.

NOTE: Establishment by Consent Order and Genetic Testing Presumption. If paternity is being established by consent order based on or in addition to a genetic testing presumption, the caseworker should update SEARCHS to show the establishment by consent order, even if the presumption has already been entered, and establishment (by genetic testing) is already shown.

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
ESTABLISHING PATERNITY

subject:
Motion for Genetic
Testing Hearing

SUPERSEDES: CS 606.3, Motion for Genetic Testing Hearing,
September 30, 1995

REFERENCES: Intent of section 40-5-233, MCA

POLICY: Applicability. The procedures in this section are
used when all of the following conditions apply:

- (1) A Notice of Parental Responsibility has been served
- (2) The alleged or presumed father has not returned a signed Statement Concerning Paternity (or its equivalent) requesting a hearing
- (3) The alleged or presumed father has not returned a signed Consent to Genetic Testing
- (4) It appears genetic testing will be necessary to resolve the paternity case.

NOTE: Option to Wait for Voluntary Testing. If the conditions above apply but the alleged or presumed father has agreed to genetic testing and, in the caseworker's discretion, is likely to appear for and cooperate with testing, the CSED may wait until after the scheduled testing date to determine if the procedures in this section are needed.

Purpose of Motion for Genetic Testing Hearing. The purpose of the motion for a genetic testing hearing is to allow the CSED to initiate procedures to compel genetic testing in a case where genetic testing is necessary to resolve paternity and the alleged or presumed father does not request a hearing on his own. If at any time in the case the alleged or presumed father signs a Consent to Genetic Testing, or actually submits to genetic testing, the motion for hearing is not needed.

Single- and Multiple-Allegation Cases. The need for genetic testing to resolve paternity (condition (4)) applies most commonly in multiple-allegation cases, where default and consent (non-tested) are not available as options. However, in single-allegation cases there are also certain combinations of case facts that would lead the CSED to move for a genetic testing hearing, as in the

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**subject: Motion for Genetic
Testing Hearing**

example below:

EXAMPLE: In a single-allegation case where conditions (1) through (3) apply, if the mother denies the paternity of the alleged or presumed father and the CSED cannot obtain other allegations from the mother and cannot close the case (the obligee is a third-party custodian, or public assistance is involved), genetic testing would be the only way to move the case forward. (Note that, because of the mother's denial the CSED would not be in a position to establish the paternity of the alleged or presumed father by default, consent, or presumption.)

Generally, situations fitting the above example will arise when there is a third-party obligee, or the multiple-allegation case has been reduced to a single allegation with the remaining allegation being a presumed father, or the alleged or presumed father is the applicant for services.

Strength of Mother's Denial. When the mother denies the paternity of an alleged or presumed father in a CSED paternity case, the caseworker must determine whether the denial has sufficient substance to prohibit paternity establishment in a single-allegation scenario. Consultation with the CSED staff attorney is recommended. Ideally denials should be submitted in writing.

PROCEDURES

RESPONSIBILITY

ACTION

Caseworker

1. Upon identifying case where conditions for motion for genetic testing hearing apply (see POLICY), prepares and has notarized form CS-606.3A, Affidavit and Motion for Genetic Testing Hearing, and forwards to Office of the Administrative Law Judge (OALJ) together with
 - copy of Notice of Parental Responsibility,
 - if motion based on mother's denial in single-allegation case, copy of mother's written denial (if any), and

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subject: Motion for Genetic
Testing Hearing

- stuffers for mother, alleged/presumed father, and their attorneys.

Caseworker
and OALJ

2. Proceeds with hearing as in section CS 605.3 or, for motion based on mother's denial, as in section CS 605.2.

NOTE: Issue at Hearing. The issue at hearing after a CSED motion for hearing, regardless of the multiple-allegation or single-allegation basis of the motion, is whether there is **either** a reasonable probability of sexual intercourse during the probable period of conception **or** a probable existence of a presumption.

Caseworker

3. If hearing determines alleged or presumed father should be ordered to submit to genetic testing, proceeds with Genetic Testing Subpoena as in section CS 605.2; proceeds with testing as in section CS 604.1, including processing of results.

If alleged/presumed father or mother fails to appear for, or submit to, scheduled drawing, takes steps to compel submission by district court order or CSED administrative remedy, as in sections CS 605.2 and 605.3. Does not attempt to enter "default" for failure to appear, even in single-allegation case.

Department of Public Health and
Human Services

CHILD SUPPORT ENFORCEMENT

section:
ESTABLISHING PATERNITY

subject:
Referral to District
Court

SUPERSEDES: CS 606.4, Referral to District Court, September 30, 1995

REFERENCES: Sections 40-5-236 and 40-5-237, MCA.

POLICY: Applicability. The procedures in this section apply when all of the following conditions are met:

- (1) The CSED has served a Notice of Parental Responsibility (NPR) on the alleged or presumed father, or has received a signed Consent to Genetic Testing from him
- (2) The CSED is establishing the paternity of an alleged or presumed father based on genetic testing results of 95% or higher statistical probability
- (3) The alleged or presumed father continues to deny paternity.

NOTE: Referral Not Available from Informal Process. If the alleged or presumed father agreed to genetic testing but never signed a Consent to Genetic Testing and was never served with an NPR, there is no contested CSED case to be referred. If the alleged/presumed father wishes to continue to deny paternity in this situation, he must file a petition of nonpaternity in district court seeking rebuttal of the presumption.

No Delay in Establishing Support Obligation. The CSED does not delay or interrupt its administrative support order establishment procedures when the paternity issue in a case is referred to district court. The alleged or presumed father--now the obligor--may ask the court to stay the CSED's NOCS action, but absent an order from the court the CSED will proceed to establish and enforce a support obligation for the obligor. If the court overcomes the presumption created by the original genetic testing results, the CSED will--as a party to the proceeding--receive notice of the determination, and will at that time terminate any support obligation that has been established.

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PROCEDURES:

RESPONSIBILITY

ACTION

Caseworker

1. Upon being contacted by alleged/presumed father continuing to deny paternity after receiving positive genetic testing results (95% or higher), proceeds as follows:
 - a. If contact is in writing and is equivalent to form CS-606.4A, Request for Referral to District Court, sends information sheet (second page of Request form) to alleged/presumed father with short cover letter acknowledging receipt of request; proceeds to step 2.
 - b. If contact is not in writing, or is not equivalent to form CS-606.4A, Request for Referral to District Court, prepares and sends to alleged/presumed father form CS-606.4A.
2. Upon receipt of completed Request for Referral to District Court within 20 days after service of genetic testing results, enters appropriate SEARCHS case note and refers Request to CSED staff attorney for action. (If Request received later than 20 days after service of testing results, consults with staff attorney about whether to proceed with Request.)

CSED Staff
Attorney

3. Upon receipt of Request for Referral to District Court from caseworker, determines whether hearing has been held in case.
 - a. If hearing has been held, prepares following or equivalent documents referring matter for determination at trial:
 - (1) Petition for referral
 - (2) Notice of referral.
 Checks SEARCHS for any reason to protect participants' personal information in above documents; if found, takes appropriate steps to protect information before proceeding.

Sends above documents to clerk of district court with copies of notice of referral and addressed envelopes for alleged/presumed father, mother, any third-party obligee, and OALJ; requests

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Court

that clerk of court file originals, assign cause number, conform copies, and send conformed copies in envelopes provided. Separately, sends additional copy of notice of referral directly to alleged/presumed father by certified mail, return receipt requested. Enters appropriate SEARCHS case note(s) for steps taken.

- b. If no hearing has been held, prepares administrative record in case according to section 40-5-236(2), MCA, as applicable; includes in record any Consent to Genetic Testing. For each participant, checks SEARCHS for any reason to protect address or other personal information contained in administrative record. If reason found, takes appropriate steps to protect identified information before proceeding.

Prepares and sends petition, notice, and copies of notice to clerk of district court with request for processing as in step 3a except,

- includes certified copy of administrative record in petition for referral, and
- does not request copy of notice be sent to OALJ.

Sends additional copy of notice of referral, along with copy of administrative record, directly to alleged/presumed father by certified mail, return receipt requested. Enters SEARCHS case note(s). Skips to step 5.

OALJ

4. Upon receipt of conformed copy of notice of referral from district court, prepares administrative record in case according to section 40-5-236(2), MCA. For each participant, checks SEARCHS for any reason to protect address or other personal information contained in administrative record. If reason found, takes appropriate steps to protect identified information before proceeding.

Files certified copy of administrative record,

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PATERNITY**subject:** Referral to District
Court

with appropriate transmittal document
referencing cause number, with district court;
sends copies of administrative record to CSED
staff attorney and alleged/presumed father,
and enters appropriate SEARCHS case note.

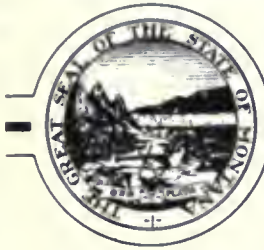
CSED Staff
Attorney

5. Represents CSED in paternity trial; arranges
for expert testimony on genetic testing as
needed.

Caseworker

6. Testifies if called as witness in paternity
trial.

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



MARC RACICOT
GOVERNOR

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November 14, 1994

To: All CSED Manual Holders
From: Gwen Kloeber, Policy Development Officer *gk*
Subject: Disregard Review Manual Pages

Disregard Reviews

The enclosed pages contain CSED procedures for administrative review of an obligee's disregard amount. Review is two-tiered (Regional Manager and Bureau Chief) and is available, under certain conditions, upon request of the obligee. By providing a formal opportunity for review, we are addressing a current Montana legal concern about proper administrative remedy in cases where an obligee disagrees with an agency's disregard determination.

There has been much discussion about which agency--IV-D or IV-A--should be responsible for providing the administrative remedy on this issue. The Administrator has determined the responsibility lies more appropriately with the CSED, since our agency is responsible for determining the amount of current support collected in the month.

We have no estimate of the number of obligees who will request formal administrative reviews under these procedures. However, the informal discussion with the caseworker at the beginning of the procedures is expected to eliminate two large groups of requestors: (1) those who can be referred to IV-A because of a problem with the delivery of the disregard check, and (2) those who are satisfied with the caseworker's explanation of how the disregard was determined.

SEARCHS Coordination

Notice of Collections. The monthly notice-of-collections letter will notify obligees of the opportunity for disregard review. At this time the new language is not yet in place--you will be alerted when the new letter is ready for production.

Forms. The three forms associated with the review procedures are not available on SEARCHS document generation. Please reproduce the forms as you need them from the hard-copy masters being sent to each region. (A copy of each form is also included in the enclosed Manual pages.)

Events. The review procedures call for CSED staff to "enter the appropriate SEARCHS case note" at certain points in the process. Standard events have been created on SEARCHS for this purpose; you will soon receive (by SEARCHS e-mail) more information on these manual events.

Caseworker Responsibility

At this time regional caseworkers are responsible for carrying out the procedures as indicated. However, it is possible this responsibility will be transferred to the new CSED "IV-A Liaison" positions being created under welfare reform. It is important, for this reason, to keep accurate SEARCHS case notes to document the volume of requests handled in the regions.

Instructions for Manual Maintenance

Insert the enclosed pages--section CS 701.3, Disregard Reviews, November 14, 1994--in your Manual. Make the appropriate entry in the Table of Contents, page 7.

Enclosures

Department of Social and
Rehabilitation Services**section:**
AFDC Distribution**subject:**
Disregard Reviews**CHILD SUPPORT ENFORCEMENT**

REFERENCE: 45 CFR 302.51(b)(1)

POLICY: Background. Federal regulations require that in AFDC cases the first \$50 of any monthly support payments made by an obligor for a given month and collected by the IV-D agency in that month be paid directly to the family. This amount is "disregarded" for purposes of determining AFDC benefit payments, and is referred to in the remainder of this section as the "disregard" payment.

Questions may arise as to whether the CSED determined the disregard payment for a particular month or months correctly. Administrative review of a CSED disregard determination is available to the obligee under the procedures established in this section.

IV-A Responsibility. CSED administrative reviews apply only when the obligee is questioning how the CSED determined the disregard payment for the month. Problems concerning receipt of payment--for example, how the IV-A agency issued and delivered the check containing the CSED-determined amount--are properly referred to the appropriate county welfare office for resolution.

Review Process. The CSED uses the monthly "notice of collections" letter to notify obligees that review of the disregard amount is available through the obligee's regional office. Review of disregard determinations is not available to obligors.

Administrative review is available upon written request of the obligee, after initial telephone contact with the CSED worker fails to resolve the obligee's concerns.

Administrative reviews are conducted on two levels:

- (1) First-level administrative review by the Regional Manager.
- (2) Second-level administrative review by the Field Services Bureau Chief or designee, if the obligee is dissatisfied with the decision of the Regional Manager.

Both reviews are "paper" reviews. No hearing is involved at either level. Decisions are issued in letter form, and no acknowledgement or signed acceptance on the part of the obligee is required.

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Decision Letters. Decisions letters to the obligee must contain the following information:

- (1) Regional Manager's Decision Letter
 - Decision of Regional Manager: amount of disregard payment for the month(s) in question, and reason for determination
 - Listing of any exhibits received from obligee and considered in review
 - Any adjustments to accounts in obligee's case, and dates or projected dates of adjustments
 - Statement explaining this is a final agency decision unless further review is requested
 - Procedure and time frame for requesting further review; consequences of failing to timely request review.
- (2) Bureau Chief's Decision Letter
 - Decision of Bureau Chief or designee: amount of disregard payment for the month(s) in question, reason for determination, and whether determination confirms or overrules Regional Manager's decision
 - Listing of any exhibits received from obligee and considered in review
 - Any further adjustments to accounts in obligee's case, and dates or projected dates of adjustments
 - Statement explaining this is a final agency decision.

Availability and Effect of Administrative Review. No more than one review at each level is available for the same month's payment or nonpayment. Also, review is available only if requested within three months of the end of the payment month in question. CSED determinations concerning availability of review are final.

All second-level reviews, and all first-level reviews not appealed by the obligee, result in final agency decisions. Judicial review of the agency decision is not possible, as there is no hearing record created in the CSED administrative review process. However, the obligee may file a de novo action in District Court.

Time Limits. Once the obligee contacts the CSED to question a disregard payment, certain time limits are imposed on the actions of both the CSED staff and the

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obligee. The CSED must confirm the initial contact, conduct the review(s), issue the review decision(s), and initiate any SPU adjustments within certain periods of time.

Likewise, the obligee must contact the CSED worker, request review(s), and submit exhibits within specific time frames. The purpose of both sets of limits is to expedite the review process for all parties. No extensions are available for the time limits given in this review process.

PROCEDURE:

<u>Responsibility</u>	<u>Action</u>
Caseworker	1. Receives call from obligee questioning specific disregard payment. Determines responsibility for problem resolution: a. If problem relates to delivery of expected disregard check, refers obligee to appropriate county welfare office for IV-A resolution; takes no further action. END OF PROCESS. b. If problem relates to determination of disregard amount, proceeds to step 2. 2. Reviews facts of case and attempts to resolve concerns during telephone conversation. Enters appropriate SEARCHS case note documenting date of obligee's initial call and whether disregard was resolved. a. If concerns resolved, initiates any necessary adjustments with Support Payments Unit (SPU), and takes no further action under this section. END OF PROCESS. b. If concerns not resolved and additional information is needed, conducts further research following telephone conversation; recontacts obligee with information obtained. i. If concerns resolved on recontact, initiates any necessary adjustments with SPU, and takes no further action under this section. END OF PROCESS. ii. If concerns not resolved on recontact, proceeds to step 3. c. If concerns not resolved and no additional information is needed, proceeds to step 3.

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3. Determines whether administrative review available for month(s) in question (see POLICY, "Availability and Effect").
 - a. If review not available, informs obligee determination on disregard payment is final, and takes no further action. END OF PROCESS.
 - b. If review available, explains administrative review process. Ascertains whether obligee wishes to proceed with review.
 - i. If so, prepares and sends form CS-701.3A, "Request for Review of Disregard Determination," within 5 working days after conversation with obligee; enters SEARCHS case note documenting date form mailed.
 - ii. If not, initiates any appropriate adjustments discovered as a result of the contact, and takes no further action under this section. END OF PROCESS.
4. If Request for Review received
 - within 11 calendar days after date of CSED mailing, assembles necessary case information, including any exhibits submitted by obligee, and forwards with Request for Review to Regional Manager; enters SEARCHS case note documenting date Request received.
 - later than 11 calendar days after date of CSED mailing, sends form CS-701.3B, "Notice of Late Request for Review of Disregard Determination." END OF PROCESS.
5. Conducts paper-only review of disregard payment. Within 14 calendar days of receipt of Request for Review issues written decision in form of letter to obligee (see POLICY for contents of decision letter); encloses form CS-701.3C, "Request for Further Review of Disregard Determination." Initiates any necessary adjustments with SPU; enters SEARCHS case note documenting date decision mailed.
6. Monitors for return of Request for Further Review.
 - a. If Request received within 11 calendar days after date of CSED mailing, assembles and mails review package to Field Services Bureau Chief within 5 working days of receipt of Request. Enters SEARCHS case note documenting date Request received. Review package for Bureau

Regional
Manager

Caseworker

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Chief includes

- Request for Further Review,
- all necessary case information,
- Regional Manager's decision letter, and
- any exhibits submitted by obligee.

- b. If Request received later than 11 calendar days after date of CSED mailing, sends Notice of Late Request. END OF PROCESS.

Bureau Chief 7.
or Designee

Conducts paper-only review of Regional Manager's decision. Within 10 working days of receipt of review package from regional office, issues written decision in form of letter to obligee (see POLICY for contents of decision letter). Initiates any necessary adjustments with SPU; enters SEARCHS case note documenting date decision mailed.

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Child Support Enforcement Division

(regional office address)

Case No.: _____ Obligee: _____
CSED Caseworker: _____
Date this form mailed to Obligee: _____

REQUEST FOR REVIEW OF DISREGARD DETERMINATION

To the Above-Named Obligee:

On _____ you spoke with the Child Support Enforcement Division (CSED) caseworker named above about amount(s) payable directly to you from child support collections for the month(s) of _____.

(For your information, the CSED refers to the amount payable directly to you each month as the "disregard.")

If you are not satisfied with the results of this informal discussion, you may request a review of the amount(s) by completing this Request form and returning it to the regional office listed above. **The regional office must receive your Request within 11 calendar days after the date (listed above) that the CSED mailed the Request form to you.** Late requests will not be considered. You may attach additional information if you wish. The regional office will conduct the review based on the information available, and will notify you in writing of the results.

To be completed by Obligee:

I request administrative review of the amount(s) payable directly to me for the following month(s), for the reason(s) stated:

Month: _____	Reason: _____
Month: _____	Reason: _____
Month: _____	Reason: _____

☐ My new address is _____

(signature of Obligee)

(date)

(telephone no.)

**The CSED must receive this Request within 11 days after
the mailing date listed at the top of this form.**

CS-701.3A
(new 11/94)

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Child Support Enforcement Division

(regional office address)

Case No.: _____ Obligee: _____

**NOTICE OF LATE REQUEST FOR
REVIEW OF DISREGARD DETERMINATION**

To the Above-Named Obligee:

On _____ the Child Support Enforcement Division (CSED)
mailed to you the form checked below, with instructions for
returning it within the time allowed.

- ☐ Request for Review of Disregard Determination.
☐ Request for Further Review of Disregard Determination.

On _____ the CSED regional office received your
returned Request. Because this receipt date was later than 11
calendar days after the CSED mailing date, the review you have
requested is not available.

CSED decisions concerning availability of review are final.

(CSED caseworker)

(date)

CS-701.3B
(new 11/94)

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Child Support Enforcement Division

(regional office address)

Case No.: _____ Obligee: _____
CSED Caseworker: _____
Date this form mailed to Obligee: _____

**REQUEST FOR FURTHER REVIEW OF
DISREGARD DETERMINATION**

To the Above-Named Obligee:

At your request the Child Support Enforcement Division (CSED) conducted a review of the amount payable directly to you from child support collections (the "disregard") for one or more months. The enclosed letter gives the results of that review. If you are not satisfied with these results, you may request further review by the CSED Field Services Bureau Chief.

To request further review, complete this Request form and return it to the regional office listed above. **The regional office must receive your Request within 11 calendar days after the date (listed above) that the CSED mailed the Request form to you.** Late requests will not be considered. You may attach additional information if you wish. The regional office will forward your Request to the Field Services Bureau Chief, who will conduct the review based on the information available and notify you in writing of the results.

To be completed by Obligee:

I request further review of the amount(s) payable directly to me for the following month(s), for the reason(s) stated:

Month: _____	Reason: _____
Month: _____	Reason: _____
Month: _____	Reason: _____

☐ My new address is _____

(signature of Obligee)

(date)

(telephone no.)

**The CSED must receive this Request within 11 days after
the mailing date listed at the top of this form.**

Department of Public Health and
Human Services

section:
COLLECTION AND DISTRIBUTION

CHILD SUPPORT ENFORCEMENT

subject:
Overcollection Agreements

SUPERSEDES: [new section]

REFERENCES: MCA § 40-5-416; ARM 46.30.507(7).

POLICY: Purpose of Overcollection Agreements. The CSED uses overcollection agreements to legally apply overcollected amounts to future arrears or existing debts in situations where the amounts must normally be refunded. There are two types of overcollection agreements:

- (1) Income withholding--these agreements are for overcollections that result from annualization by the employer (withholding in 26 or 52 pay periods--see Special Annualization Considerations below). Overcollections are applied to arrears that accrue in future months as a result of annualized withholding.
- (2) Non-income withholding--these agreements are for overcollections that result from two or more collection actions for the same period of debt. Overcollected amounts are applied to debt accrued after the specified debt period, or to arrears accrued in future months.

Conditions for Overcollection Agreements. Overcollection agreements are appropriate only when all of the following conditions apply:

- (1) Amounts are collected that cannot be posted to an existing SEARCHS account.
- (2) The overcollection is not automatically refunded by SEARCHS.

(When conditions (1) and (2) are met, SEARCHS will include the amount of the overcollection on a list automatically generated for caseworker review and resolution.)

- (3) There is a reasonable expectation of a future delinquency, OR additional debt has already accrued to which the collection cannot be applied without the obligor's authorization.

EXAMPLE: The obligor is a construction worker who is employed 7 months a year. Each year the obligor falls behind in child support payments during the off-season. The CSED obtained a writ of execution for support owed from January through December of 1995. After the writ was issued, the CSED received a federal tax offset that paid all support owed for the same period. Then, the

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CSED received money from the writ. An agreement may be appropriate to keep the writ money to cover the obligor's support obligation during the next off-season.

Future Delinquency. The CSED may have a reasonable expectation of a future delinquency if according to the facts of the case there may be

- a future undercollection by income withholding because of annualization;
- a future undercollection by income withholding because of federal Consumer Credit Protection Act limits;
- a future undercollection under an approved payment plan for less than current support;
- future unemployment related to seasonal work;
- future unemployment consistent with a personal history of unemployment.

In predicting a future delinquency the caseworker should also take into account the general payment history, the employer's withholding compliance record, and the size of and reason for the debt that was the basis for the collection.

Special Annualization Considerations. An employer may "annualize" payments under an income withholding order when the employer's pay frequency is based on some time period other than a month. Annualized payments for any given month will total either more than or less than the ordered monthly withholding, but over the course of 12 months the withheld amount will be equal to the ordered amount.

In cases where annualization creates arrears amounts, or "annualization deficits," in certain months, the CSED will apply any later overcollections from annualization to those annualization deficits. An overcollection agreement is **not** required for this action. However, if the overcollection exceeds any existing annualization deficits, the agreement **is** required for the CSED to apply the remainder of the collection to annualization deficits in future months.

Overcollections Not Applicable to Current Support. In applying an overcollection to a future month, the caseworker must wait for arrears to accrue for that month, then request an adjustment to apply the money to the arrears account. Except in unusual situations, CSED accounting policy prohibits application of overcollected amounts to existing or future current support accounts.

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Agreement Not Applicable to Federal Tax Offsets. Although, technically, the language of the overcollection agreement would allow the CSED to keep and apply an overcollection by federal tax offset (FTO), it is the **CSED's policy to refund all FTO overcollections.** Of course, this does not prevent the CSED from performing reasonable adjustments to previous non-FTO collections, so the FTO declining balance can absorb the FTO collection. See the following EXAMPLE:

EXAMPLE: A debt is certified at \$500 for federal tax offset. Shortly before the FTO collection is received, the CSED collects \$300 on a writ for the same period, and applies the proceeds to the FTO-certified debt. When the FTO collection for the full amount comes in, it overpays the declining balance of the certified debt by \$300. Instead of refunding the \$300, the CSED may wish to move the writ collection amount out of the FTO account, apply the FTO collection to the restored \$500 debt, and seek an overcollection agreement to apply the writ collection to another debt (anticipated future arrears, for example). NOTE: This type of adjustment would be "reasonable" only if the two collections were received within a short time of each other, and all other conditions for an overcollection agreement on the writ money applied.

Informal Consent. In certain case-specific situations the CSED collects amounts--usually by regular payment or income withholding--intended by the payor for future support. Examples are teachers' payments for summer months, and payments regularly made a few days before the first of the month. In these cases an overcollection agreement is not needed to apply the payment to future support; however, the caseworker should ensure there is enough evidence of intention (such as payment history) in the case file to justify the action.

PROCEDURES:

RESPONSIBILITY ACTION

The following procedures include only general instructions on performing necessary adjustments; communications with TAPP will take different forms depending on the specific pay source involved.

Caseworker	1. Upon identifying collection or portion of collection that meets first two conditions for overcollection agreement (SEARCHS cannot
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- automatically apply or refund the amount),
- for collection by income withholding proceeds to step 2.
 - for collection by other than income withholding proceeds to step 3.
2. Where income withholding is in place for obligor, determines whether overcollected amount is result of annualization, using questions (1) through (3) below. If answer to all three questions is "yes," assumes overcollection is result of annualization; proceeds to step 2a. If answer to any question is "no," assumes overcollection is not result of annualization; procedures in this section do not apply.
- (1) Are all payments in current month by income withholding?
 - (2) Are all payments in current month from same employer?
 - (3) Are payments consistent over past six months (or since withholding order took effect, if less than six months ago)?
- a. If annualization deficit exists for any past month(s), applies overcollection to those accounts using regular SEARCHS accounting procedures. NO OVERCOLLECTION AGREEMENT IS NEEDED.
- b. If no annualization deficit exists, or if any portion of overcollection amount remains after application to existing deficit(s), pursues overcollection agreement in step 4.
3. For collection by other than income withholding, determines whether third condition for overcollection agreement applies (expectation of future delinquency, or existing debt not authorized for this collection). If so, proceeds to step 4. If not, takes no further action; procedures in this section do not apply.
4. Immediately upon determining that overcollection agreement would apply, takes appropriate action to prevent SEARCHS from refunding collection by default (specific actions may vary depending on pay source, TAPP procedures, and available SEARCHS accounting selections). Retains hold on collection until action can be taken in step 7 or 8, and

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proceeds as follows:

- a. If overcollection is result of income withholding annualization, prepares form CS-706.1A, income withholding version (Agreement to Apply Funds Collected Under Withholding Order).
 - b. If overcollection is not result of income withholding, prepares form CS-706.1A, non-income withholding version (Agreement to Apply Funds Not Collected by Withholding Order).
5. Prepares cover letter explaining use of Agreement and requirements for notarization and return, and sends with Agreement to obligor by regular mail. Enters SEARCHS casenote specifying date and type of Agreement sent (income withholding or non-income withholding); sets tickler for 10 days after date of mailing.

NOTE: Telephone Contact Prior to Mailing. The caseworker may wish to contact the obligor by telephone before sending the written Agreement, to explain or negotiate the Agreement or to find out if the obligor is willing to sign it. (See CAUTION on oral agreements in step 6.)

6. If obligor contacts CSED to discuss Agreement, explains options and attempts to obtain signed Agreement. For non-income withholding Agreement, if obligor is willing to apply only a portion of the overcollected amount, prepares and sends revised Agreement specifying dollar amount obligor is willing to apply.

CAUTION: Oral Agreements Not Acceptable. If in the course of any discussions in this area the obligor agrees orally to the proposed application of funds, the CSED must still obtain a signed, written agreement to keep any part of the overcollection. If no written agreement is received, the caseworker must proceed as in step 8.

7. If obligor signs and returns Agreement within 10 days, signs and dates Agreement and places in case file; enters SEARCHS casenote for type of Agreement and date executed.

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- a. For income withholding agreement entered **before SEARCHS annualization capability is in place** (see NOTE below), monitors current support account. When annualization deficit appears, sends adjustment to apply overcollection to deficit; takes action to prevent any remaining amount from being refunded, and repeats procedure in this substep each month until amount exhausted.
- b. For income withholding agreement entered **after SEARCHS annualization capability is in place** (see NOTE below), updates annualization and consent fields on SEARCHS OWI screen. Monitors accounts for first month following OWI update, and sends adjustment if necessary.

NOTE: Automated Annualization. OWI processing of the annualization consent will trigger two automatic SEARCHS functions: (1) overcollected income withholding amounts will be automatically applied to existing annualization deficits, and (2) any remaining amounts from the overcollection will be automatically held and applied to future deficits. Caseworker intervention following execution of the agreement will not be required. (SEARCHS capability in this area was not in production as of this writing.)

- c. For non-income withholding agreement proceeds in (I) or (ii) (or both) below, according to reason(s) for agreement:
 - (I) Applies funds to existing debt as applicable. Refunds remaining amount, or proceeds as in (ii) below.
 - (ii) Monitors succeeding months' accounts until arrears accrue, and sends adjustment to apply funds as appropriate. For any remaining funds, takes action to hold or refund, depending on expectation of future delinquency. Repeats procedures in this substep (ii) until original overcollection is exhausted.

For any separate overcollection, begins again at step 1. (Agreement to apply overcollection is specific to pay source and debt period; it does not extend to any other overcollections.) If agreement is for only partial amount of

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identified overcollection, immediately refunds unapproved portion, and applies remaining funds as in this substep (7c).

8. If obligor does not sign and return Agreement within 10 days, proceeds as follows:
 - a. At caseworker's discretion, contacts obligor to determine whether agreement can be expected. Proceeds to step 8b or 8c depending on outcome of contact.
 - b. If agreement is signed and returned, proceeds as in step 7.
 - c. If agreement is not signed and returned, refunds overcollection, and enters SEARCHS casenote agreement not returned. Failure to return signed agreement is considered refusal to authorize application of funds, and overrides any presumed consent to the contrary. (Note that this is a different situation from one in which "informal consent" applies, and no agreement is ever sent; see POLICY.)

If agreement was for income withholding collection, updates SEARCHS OWI screen if applicable (see NOTE after step 7b regarding SEARCHS capability timing).

Department of Revenue

SECTION:

RESPONSIBILITIES & DUTIES

SUBJECT:

Bureau Chief

CHILD SUPPORT ENFORCEMENT

RELATIONSHIPS:

1. Responsible to the Administrator of the Legal Division for operation of the Montana Child Support Enforcement program.
2. Responsible for the activities of the Assistant Bureau Chief, the Regional Supervisors, and the Support Payments Manager.

RESPONSIBILITIES
& DUTIES:

STATE PLAN--Submits changes and updates to the Region VIII Office of the Child Support Enforcement according to 45 CFR 301.13.

STATEWIDE OPERATIONS--Ensures equitable standards for administration that are mandatory throughout the state. Satisfies himself that the establishment of paternity and collection of support are being carried out in keeping with established standards and procedures.

FISCAL POLICIES--Satisfies himself that an accounting system and supporting fiscal records are maintained to assure that claims for Federal funds are in accord with applicable Federal requirements.

COST ALLOCATION--Submits a plan which identifies and describes the methods and procedures established for properly charging the costs of administration, services, and training activities.

CONTRACTS--Signs Cooperative Agreements. Signs all purchases of services for Child Support Enforcement.

SUPERVISION--Hires, trains, and fires employees in Item 2 above. Responsible for carrying out state personnel policies. Approves all tasks relating to Child Support.

SECTION:

RESPONSIBILITIES & DUTIES

SUBJECT:

Bureau Chief

SERVICE DELIVERY--Establishes regional responsibilities including the location of field offices.

POLICY & PROCEDURE--

1. Issues the Child Support Enforcement (CS) Manual and determines the number of holders.
2. Issues the Child Support Payments (SP) Manual and determines the number of holders.
3. Approves all manual documents.
4. Issues "Bulletins" to the CS and SP Manuals.
5. Initiates planning regarding proposed policy changes.
6. Interprets manual documents for CSE Regional Supervisors.

FUNDING--Participates in budget formulation with supervisor. Makes budget presentation to the Legislature. Negotiates regional budgets. Reviews expenditure reports. Takes necessary corrective action when expenditures exceed revenue.

MEETINGS & DISCUSSIONS--Attends meetings and discussions with officers of other State and Federal agencies, public entities, or agencies in the private sector. Liaison officer to the AFDC program in the Department of Social and Rehabilitation Services.

AUDIT--Makes available personnel associated with the Child Support program to provide answers which any appropriate audit staff may find necessary.

LEGISLATION--Drafts proposed laws or changes in existing laws, prepares and delivers testimony on such.

FORMS CONTROL--Approves all new forms and number of copies.

Department of Revenue

SECTION

RESPONSIBILITIES AND DUTIES

SUBJECT

Assistant Bureau Chief

CHILD SUPPORT ENFORCEMENT

- RELATIONSHIP:
1. Responsible to the Bureau Chief for operation of the Program Services Unit.
 2. Without special designation, assumes the duties and responsibilities of the CS Bureau Chief in his absence.
 3. Responsible for the activities of the Program Assistant and the Locate Supervisor.

RESPONSIBILI-

TIES AND DUTIES: REGIONAL OFFICES--Investigates, analyses, and advises the Chief on improving the effectiveness of case methods and procedures including the distribution of work assignments. Makes commitments on individual cases requiring the application of Bureau policy.

FEDERAL REPORTS--compiles and submits the following federal reports:

- | | | | | |
|--------------------------|---------------------------------|------|------|-------|
| 1. OCSE-34 | 1/31 | 4/30 | 7/31 | 10/31 |
| 2. OCSE-41 | 1/31 | 4/30 | 7/31 | 10/31 |
| 3. OCSE-3 | 1/31 | 4/30 | 7/31 | 10/31 |
| 4. OCSE-25 | 2/15 | 5/1 | 8/15 | 11/15 |
| 5. OCSE-65 | 2/15 | 5/1 | 8/15 | 11/15 |
| 6. Flash Report | 10th of @ month for prior month | | | |
| 7. DFAFS-27, 27A,
27B | FEB. MAR. AUG. SEPT. | | | |

PERFORMANCE REPORT--develops, issues, and revises a quarterly benefit/cost report.

LETTER OF CREDIT--submits claims for grant award; makes any corrections and adjustments.

STATE PLAN--maintains updated plan according to Federal Regulation and State policy. Prepares changes for Bureau Chief approval.

CS FIELD MANUAL--prepares written procedures and policies for inclusion in the Child Support Manual.

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

Assistant Bureau Chief

CONTRACTED SERVICES--

Cooperative Agreements--Receives progress reports and claims from county attorneys. Reviews both for adequacy. Designs cost review guide for use in determining actual costs in accordance with Federal Regulation. Instructs CS Regional Supervisors in its use.

County CS Projects--Receives reports and claims for reimbursement. Reviews both for adequacy; requests further information if necessary. Applies cost allocation principles and makes preliminary determination of allowability of costs. Refers disallowances to Bureau Chief.

Intra-Agency Contracts--Reviews billings of Centralized Services, Data Processing and Legal Divisions of DOR to ensure contract compliance and adherence to approved cost allocation methods before and after payment.

Purchased Services--Reviews expenditures from Hearings Officer, collection agencies, and other vendors for contract compliance.

FISCAL AND AUDIT--Approves bills prior to payment, rejects incomplete bills and negotiates amount of correct bills. Participates in reviews of DOR accounting and program practices conducted by federal audit and program staff members.

MEETING AND DISCUSSIONS--Primarily within the organization for the purposes of coordinating the work of offices, maintaining procedure, and making application to difficult or problem cases. Meets with Federal program and audit staff; District Judges; County Attorneys; and AFDC program staff. Represents Bureau Chief at functions he is unable to attend. Prepares and presents legislative testimony. Meets with Legislative Fiscal Analyst, OBPP Budget Analyst.

CORRESPONDENCE--Handles expeditiously when action or reply is required. Occasionally prepares correspondence for Bureau Chief.

Department of Revenue

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

Regional Supervisor

CHILD SUPPORT ENFORCEMENT

- RELATIONSHIP:
1. Responsible to the Child Support Enforcement Bureau Chief for bureau operations within a designated region.
 2. Responsible for the investigation and enforcement activities of satellite office managers and regional office personnel.
 3. Upon written designation, temporarily assumes the duties and responsibilities of the Bureau Chief.

RESPONSIBILITIES:

PRODUCTION--Assumes responsibility for production in the region. With staff, plans strategies and objectives to meet program goals. Monitors and controls the region to meet CSEB standards.

WORKLOAD--Assigns areas of responsibility to offices in the region. Distributes work so that no office or employee is relatively overworked.

COMPLIANCE--Spot check work completed by others. Review case files for completeness and accuracy. Review compliance aspects of cooperative agreements. Administer contracts for county CSE projects. Complete annual compliance review of all purchase of service agreements within the region.

CSEB REPRESENTATIVE--Explains program to individual citizens and organizations in the Region. Negotiates with county attorneys in cooperative agreement matters. Answers complaints and other problems. Assumes responsibility as necessary in the region.

PERSONNEL--Approves, within region, travel of all regional employees. Recommends staff and office locations to Bureau Chief. Interviews and hires employees of the Regional Office; and the satellite office supervisor. Responsible for training of region employees.

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

Regional Supervisor

RESPONSIBILITIES

(Cont.):

DEBTS TO STATE--Approves time payments of arrearages.
Refers uncollectable debts to Bureau Chief.

ENFORCEMENT--Reviews request of the Enforcement Specialist for issuance of Warrant of Distrainment and forwards to Chief. Makes final approval of requests for issuance of Writs of Execution. Reviews requests for Release of Lien. Serves Notice of Levy.

PATERNITY--Conducts paternity interviews and presents testimony in court.

CASE CONTROL--Approves cases for permanent closure.

COUNTY WELFARE--Solves all problems arising from the day-to-day contact between CSEB staff and county welfare staff.

POLICY AND PROCEDURE--Disseminates policies and information to investigation and enforcement staff within the region. Conducts portions of statewide staff training sessions.

BUDGET--Budgets for and controls regional expenditures. Responsible for inventory of regional equipment.

CASEWORK--Conduct investigations in civil and criminal cases in support enforcement and welfare fraud.

Department of Revenue

SECTION

RESPONSIBILITIES AND DUTIES

SUBJECT

Program Assistant

CHILD SUPPORT ENFORCEMENT

- RELATIONSHIP:
1. Under general supervision, is responsible to the Assistant Bureau Chief.
 2. Responsible for the job activities of the Office Clerk.

RESPONSIBILITIES
AND DUTIES:

HEARINGS COORDINATOR--Developes policies, procedures and programs necessary to conduct pre-hearing settlement conferences and administrative hearings for the Child Support Enforcement Bureau. Coordinates hearings schedule with Hearings Officer(s) and CSE program and legal staff. As needed, prepares transcript of hearing for use in District Court review. Types, edits, and certifies mailing of legal documents for Hearings Officer(s). Occasionally attends hearings to provide policy and procedure information to Hearings Officer(s) and conveys policy problems to CSEB Chief.

ADMINISTRATIVE MANAGEMENT--Provides administrative and procedural notices to staff. Maintains Bureau inventory, processes leave requests, travel advances and personnel action reports. Prepares and reviews requisitions for major office equipment purchases and renewal of lease and maintenance contracts. Updates Montana Operations Manual and distributes information to field staff. Reviews all expenditures and contracts for supervisor approval. Monitors and maintains current office lease agreements statewide. Responds verbally and in writing to general inquiries on policy requiring technical knowledge of the Child Support Enforcement program.

MANAGEMENT REPORTS--Proofreads, edits, develops and issues comprehensive reports on a monthly and quarterly basis. Relays instructions to field offices, selecting data and preparing reports for Bureau Chief and Assistant Bureau Chief.

LETTER OF CREDIT--Completes payment voucher on Letter of Credit withdrawals to assure adequate working cash for CSEB operations.

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

Program Assistant

CHILD SUPPORT ENFORCEMENT MANUAL--Types and maintains master CSE Manual. Develops and issues formal manual documents as necessary.

ON-SITE-REVIEWS--Accompanies Assistant Bureau Chief in on-site review of regional offices, county CSE projects, and contracted service agreements. Conducts organizational surveys recommending improvements in policy, coordination and efficiency. Exchanges ideas, information and opinions with others to formulate policies and arrive at decisions, conclusions and solutions in the management of Administrative Unit to provide service to regional and central staff.

MEETINGS AND DISCUSSIONS--Assists in scheduling and participating in staff meetings and training sessions primarily within the CSEB.

CONTRACTS--Prepares and negotiates contracts for Hearings Officer(s) with private and state attorneys.

CORRESPONDENCE--Composes and signs correspondence as related to job duties. Occasionally prepares correspondence for Bureau Chief and Assistant Bureau Chief.

FEDERAL REPORTS--Assumes the reporting duties of the Assistant Bureau Chief in her absence.

ITINERARIES--Prepares travel itinerary and makes lodging arrangements for the child support staff as necessary.

Department of Revenue

SECTION

RESPONSIBILITIES AND DUTIES

SUBJECT

Office Clerk

CHILD SUPPORT ENFORCEMENT

RELATIONSHIP: 1. Under direct supervision, is responsible to the Administrative Assistant.

RESPONSIBILITIES
AND DUTIES:

URESA--Serves as URESA agent for statewide Child Support Enforcement operations. Coordinates and responds to correspondence from out-of-state jurisdictions.

CORRESPONDENCE--Composes and types routine correspondence, acknowledgment letters, and stylized replies. Proofreads materials for grammatical and typing errors making corrections before release. Prepares meeting minutes from notes and tape. Reviews outgoing correspondence to determine that each piece is dated, correctly addressed, signed, and copied appropriately.

SUPPLY ORDERING--Maintains office supplies for six field offices also as well as central office and orders office equipment. Completes printing requests for all offices.

RECEPTIONIST--Acts as receptionist, answers telephone, greets visitors, arranges appointments and interviews. Provides routine information concerning the agency to prospective clients, requiring a current general knowledge of Bureau functions.

CLAIMS PROCESSING--Reviews bills for accuracy, confers with vendors on problem invoices, verifies existing contracts, recalculates arithmetic computations, maintains daily bill accounting system for federal letter-of-credit compliance, and performs liaison function for Bureau with Centralized Services Division of Department.

DOCUMENT MAINTAINANCE--Maintains central file of Child Support Legal Documents. Develops and maintains file of registered Warrants For Distraint statewide for the Bureau. Removes released liens from the Warrant For Distraint file upon request of the Bureau Chief.

CS 801.14

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

Office Clerk

DISPATCHES MAIL--Receives, opens, date stamps, checks for enclosures, records, sorts and dispatches incoming mail. Folds, seals, and dispatches all mail ready for release.

PAYROLL REPORTING--Posts work and leave records as required each pay period for all regional and central office employees. Verifies leave changes and balances. Prepares payroll reports listing names and hours worked.

Department of Revenue

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

State Parent Locator

CHILD SUPPORT ENFORCEMENT

RELATIONSHIP:

1. Responsible to the CSEB Assistant Bureau Chief, for statewide operation of the Locate Unit.
2. Responsible for the Assistant Locator's job activities.

RESPONSIBILITIES
AND DUTIES:POLICY AND PROCEDURE--

1. Develops, drafts and implements a procedures search manual for use by State Parent Locate Personnel.
2. Prepares written instructions and revisions on location techniques, procedures, policies and regulations for inclusion in the Child Support Field Manual.
3. Provides interpretation of existing Bureau policies as they relate to location procedures. Composes and signs correspondence.

REPORTS-- Designs and compiles monthly and quarterly statistical reports on the Locate Unit's performance.

TRAVEL/TRAINING-- Travels to Child Support Enforcement Regional Offices to provide technical assistance and instruction on location and asset techniques and development of local locate sources.

CONTRACTS-- Prepares and negotiates contracts for exchange of information with other state, federal and private agencies.

LOCATION SERVICES--

1. Develops, designs and interprets forms used by field staff and other PLS Units.
2. Requests out-of-state location assistance from other States' Child Support Agencies.
3. Provides Montana asset and location information to CSEB staff and to other states as requested.

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

State Parent Locator

4. Coordinates location efforts with law enforcement, State, Federal, County and private agencies in obtaining locate and asset information. Complies with their respective requests, laws and regulations.

CASE MANAGEMENT--Reviews, accepts and works cases referred to the State Parent Locate Unit. Prevents duplication of efforts by monitoring case efficiency and maintains accurate records. Determines appropriate action and conducts extensive investigation of all applicable sources.

COMPLIANCE/CONFIDENTIALITY--Operates the Locate Unit in compliance with Federal and State Laws and in accordance to policies of the Child Support Enforcement Bureau, taking corrective action when necessary. Maintains confidentiality of location case files and sources of information. Responsible for proper disclosure to authorized personnel.

MEETINGS--Attends meetings with staff, public, state and federal agents in areas concerning Locate procedures, techniques, policies and training.

Department of Revenue

SECTION:

RESPONSIBILITIES AND DUTIES

SUBJECT:

Assistant State
Parent Locator

CHILD SUPPORT ENFORCEMENT

RELATIONSHIP: Responsible to the Child Support Enforcement Bureau
State Parent Locator.

RESPONSIBILITIES
AND DUTIES:

LOCATION SERVICES

1. Obtains address, employment and asset information from Federal, State, County and private agencies.
2. Requests out-of-state location assistance and provides Montana location services to CSEB staff and other states as requested.
3. Prepares and processes NAFDC "Locate Only" cases.
4. Researches and develops new sources of location and asset information.

POLICY AND PROCEDURES

1. Develops, researches and drafts initial sections of Montana State Parent Locate Unit Manual as instructed by supervisor.
2. Interprets basic existing Bureau policies as they relate to the location process to CSEB personnel.

CASE MANAGEMENT

1. Prepares cases, determines appropriate search action, conducts investigations and discloses information obtained to authorized personnel.
2. Monitors caseload and maintains quality control and proper case records and files.

Department of Social and
Rehabilitation Services

Section:

RETAINED SUPPORT

Subject:

CHILD SUPPORT ENFORCEMENT

AFDC Repayment

SUPERSEDES: CS 901.1, "Repayment", November 15, 1985.

REFERENCE: 45 CFR 232.12(b)(4); 45 CFR 302.31(a)(3)(ii); 45 CFR 303.80

POLICY: Under the IV-D State Plan, Montana is designated as a "IV-D Recovery State". This means any support payments directly paid to recipients of Aid to Families with Dependent Children (AFDC) and retained must be recovered by action of the CSED.

NOTE: If the amount of improperly retained current support in any one month is equal to or less than \$50.00 and the recipient would have been eligible for a \$50.00 disregard, no recovery action is necessary. Only amounts in excess of \$50.00 per month should be pursued.

The CSED attempts to recover any improperly retained child support from the AFDC recipient through a voluntary payment agreement. The signed agreement authorizes SRS Fiscal to withhold 10% of each AFDC check until the improperly retained child support is paid back to the state.

CSED must refer an AFDC recipient to IV-A for non-cooperation if the recipient refuses to sign a repayment agreement.

COURT ACTION

If administrative remedies fail, retained support payments can be recovered using civil court remedies. However, AFDC recipients are judgment proof. Therefore, in most situations court action is not reasonable. Before a decision is made to pursue repayment through civil court remedies, it must be determined to be cost effective. A civil action may be initiated in Small Claims, Justice, or District Court to recover assigned support payments improperly retained by the custodial parent. The resulting judgment can be used as a basis for garnishments of wages or the seizure and sale of property. It bears interest at the rate of 10% (simple) per annum.

Section:

RETAINED SUPPORT

Subject:

AFDC Repayment

The following administrative procedures constitute the foundation for a civil action.

PROCEDURES:

AFDC REPAYMENT PROCEDURES

Responsibility

ACTION

.Caseworker/
Typist

1. Upon the discovery that assigned support payments have been improperly retained by the custodial parent while AFDC was being received, investigates, determines, and documents the amounts and dates of such payments.
2. Prepares and mails from CS-901.1A, "Letter of Intent to Recover Retained Support" and form CS-901.1B, "AFDC Voluntary Payment Agreement/Authorization for Vendor Payments" (Repayment Agreement) to the custodial parent, retaining a copy of each for the case record. Diaries for reply by the 13th calendar day.
3. If no contact from the custodial parent, proceeds with non-cooperation action.
4. If contacted by the custodial parent, and the custodial parent can establish that:
 - a. AFDC was not received in some or all of the months support is alleged to have been retained; or,
 - b. Some or all of the retained payments were not intended as child support; or,
 - c. Payments in the form of checks or money orders were not endorsed, cashed, or received by the custodial parent

Adjusts the amount to be repaid and proceeds to step 5 below.

5. If the custodial parent admits assigned support has been improperly retained and is willing to repay it voluntarily (without court action), secures custodial parent's signature on the form CS 901.1B, "AFDC Voluntary Payment Agreement/Authorization for

Section:

RETAINED SUPPORT

Subject:

AFDC Repayment

Vendor Payment" in the presence of a Notary Public, who then Notarizes it. Proceeds to step 6.

NOTE: If the custodial parent pays the entire amount of the improperly retained support in a single payment, no Repayment Agreement is necessary.

6. Creates a new account for the repayment action by:
 - a. Setting up a new case on system with the custodial parent as both obligor and obligee; and,
 - b. Distributing copies of the signed, notarized form CS 901.1B, "AFDC Voluntary Payment Agreement/Authorization for Vendor Payments" as specified on the form.
7. Monitors for non-payment if the obligee's AFDC is terminated. (The AFDC repayment is withheld from the AFDC grant. Therefore, the AFDC obligee cannot fail to make a payment once the repayment agreement is signed.) If AFDC is closed, proceeds with NAFDC Repayment procedures (see Section CS 901.2). If AFDC is reopened, sends SRS Fiscal a copy of the original form CS 901.1B, "AFDC Voluntary Payment Agreement/ Authorization for Vendor Payments". Attaches note to the copy of form CS 901.1B to inform SRS Fiscal of the amount of the current remaining repayment debt.
8. If repayment cannot be secured under the foregoing procedures, consults a Regional Supervisor and Staff Attorney concerning the advisability of pursuing civil court remedies.

SAMPLES AND INSTRUCTIONS FOLLOW

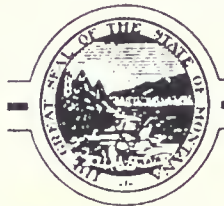
Section:

RETAINED SUPPORT

Subject:

AFDC Repayment

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



STAN STEPHENS
GOVERNOR

JULIA E. ROBINSON
DIRECTOR

STATE OF MONTANA

DATE: _____ ①

Dear: _____ ③ :

You assigned your right to keep child support payments to the State of Montana when you received AFDC benefits. Our investigation shows you have kept child support payments assigned to the State of Montana.

DATE(S) OF PAYMENT(S): _____ ④

TOTAL AMOUNT KEPT: _____ ⑤

The Child Support Enforcement Division must recover the total amount of improperly retained support from you.

You may disagree with the results of our investigation or have questions about your responsibilities. If so, please contact me at the telephone number or address listed at the end of this letter.

If you wish, you can pay the total amount immediately. Send a cashier's check or money order for the full amount to this office. Please be sure to mark the check or money order as "Repayment."

If you cannot pay the whole amount now, you may agree to have 10% of your monthly AFDC grant withheld. The Department of Social and Rehabilitation Services will apply that money to the debt until it is paid.

Sign the enclosed "AFDC VOLUNTARY PAYMENT AGREEMENT / AUTHORIZATION FOR VENDOR PAYMENTS" form to choose this payment plan. Remember to sign it in the presence of a notary public. Return the form to this office within ten (10) days of the date of this letter.

YOU MUST PAY THE AMOUNT DUE NOW, OR SIGN THE AGREEMENT. IF YOU DO NOT, THIS OFFICE WILL RECOMMEND TO WELFARE THAT THEY REMOVE YOUR NEEDS FROM THE AFDC GRANT. THIS OFFICE MAY ALSO ASK WELFARE TO APPOINT A PROTECTIVE PAYEE FOR YOUR CHILDREN.

I will refer this matter to our legal staff for review if you fail to repay the child support you improperly kept. Your immediate attention to this matter is very important.

Sincerely,

⑥

CHILD SUPPORT ENFORCEMENT DIVISION

CS 901.1A
(Rev. 9/91)

"Working Together To Empower Montanans"

Section:

RETAINED SUPPORT

Subject:

AFDC Repayment

INSTRUCTIONS:

Responsibility

Call Out Number ACTION

FORM CS-901.1A, LETTER OF INTENT TO RECOVER RETAINED SUPPORT -- Used to notify the custodial parent the Department intends to recover assigned support payments improperly retained while AFDC was received.

.Caseworker/
Typist

1. Enter the current date.
2. Enter the name and address of the custodial parent.
3. Enter the name of the custodial parent.
4. Enter the date(s) of child support payment(s) the custodial parent kept that were assigned to the State of Montana.
5. Enter the total amount of improperly kept child support.
6. Enter the address and phone number of the regional office and sign your name.

Section:

RETAINED SUPPORT

Subject:

AFDC Repayment

STATE OF MONTANA
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

AFDC VOLUNTARY PAYMENT AGREEMENT
AUTHORIZATION FOR VENDOR PAYMENTS

Address: _____ ① _____ Name: _____ ② _____
 _____ Social Security Number: _____ ③ _____
 _____ Case Number: _____ ④ _____

I owe the State of Montana, Department of Social and Rehabilitation Services, Child Support Enforcement Division (CSED) the amount listed below. I must pay this amount because I kept support payments which were assigned to the State of Montana. My right to keep support was assigned when I received AFDC benefits.

DATE(S) OF PAYMENT(S): _____ ⑤ _____
 TOTAL AMOUNT KEPT: \$ _____ ⑥ _____

To pay this amount, I authorize the payment of 10% of my monthly AFDC benefits to the CSED by vendor payment. The payments shall start as soon as practical. I understand that this agreement will continue until the above amount is PAID IN FULL.

If my AFDC benefits stop, I agree to contact the CSED to make other payment arrangements.

I agree that if I violate this agreement, the CSED can declare the remaining amount due. The CSED can use any legal means to collect the remaining amount. If either party must take legal action to enforce this agreement, the prevailing party can recover from the other party all costs, including attorney fees.

I have entered into this agreement voluntarily. I am not under the influence of any intoxicating substances. I give up my right to claim the benefit of any statutes of limitation which may affect this agreement. I have either consulted with an attorney, or give up my right to do so.

DATED this _____ ⑦ _____ day of _____, 19 _____
 _____ ⑧ _____
 (Signature)

STATE OF _____)
 _____ :ss. ⑨
 County of _____)

Before me, a Notary Public for this State, personally appeared the person named above, whose identity was known or proved to me, and executed the above assignment in my presence.

IN WITNESS WHEREOF, I set my hand and affix my official seal, the day, month and year written above.

(seal)

 Notary Public for the State of Montana.
 Residing at: _____, Montana.
 My commission expires: _____

- (WHITE - SRS Fiscal Bureau YELLOW - CSED File PINK - IV-A Welfare Office GOLDENROD - AFDC Recipient) -

CS-901.1B
 (09/90)

Section:

RETAINED SUPPORT

Subject:

AFDC Repayment

INSTRUCTIONS:

Responsibility

Call Out Number ACTION

FORM CS-901.1B, "AFDC VOLUNTARY PAYMENT AGREEMENT AUTHORIZATION FOR VENDOR PAYMENT" -- Used to enter into an agreement with a custodial parent for repayment of improperly retained support payments through withholding from currently paid AFDC benefits.

.Caseworker/
Typist

1. Enter the address of the custodial parent.
2. Enter the custodial parent's name.
3. Enter the custodial parent's Social Security Number.
4. Enter the IV-D case number.
5. Enter the date(s) of child support payments which were improperly kept by the custodial parent.
6. Enter the total amount of improperly kept child support payments.

.Obligee

7. Enter the date.
8. Obligee signs his or her name.

.Notary
Public

9. Notary enters the name of the state and county in which the form is signed, signs his or her name, enters the name of the city in which he or she resides, enters the date his or her commission expires, and affixes the seal.

Department of Social and
Rehabilitation Services

Section:

RETAINED SUPPORT

Subject:

CHILD SUPPORT ENFORCEMENT

Tax Offset Adjustment Repayments

POLICY:

The Terms and Conditions for Non-Public Assistance Child Support Enforcement Services require obligees to return to the CSED any monies received through the tax offset intercept program that have been adjusted.

These adjustments can result from any of the following:

- An injured spouse claim is honored allowing part or all of the tax offset to be returned to the obligor's current spouse after the collection has been issued to the obligee; or,
- There may be incorrect tax calculations (math errors) on the return resulting in adjusted amounts available for refund; or,
- The refund must be used to pay other debts before it is available for child support. The priority sequence for intercept of a refund is IRS tax liability, AFDC liability, other federal loans (student loans), then NAFDC child support liability; or,
- The intercept was made on the wrong person's refund.

A new account is not opened for the repayment of improperly retained tax offset monies.

Enforcement

If administrative remedies fail, retained tax offset monies received as support payments can be recovered using civil court remedies. A civil action may be initiated in Small Claims, Justice, or District Court to recover assigned support payments improperly retained by the custodial parent. The resulting judgment can be used as a basis for garnishments of wages or seizure and sale of property. It bears interest at the rate of 10% (simple) per annum.

The following administrative procedures constitute the foundation for a civil action.

PROCEDURES:

Responsibility

ACTION

RETAINED SUPPORT

Tax Offset Adjustment Repayments

.SPU Account
Worker

1. Upon the discovery that federal income tax offset monies sent to the custodial parent must be returned, investigates, determines, and documents the amounts and date(s) of such payment(s).
2. Prepares form CS-901.3a, "Request for Repayment of Tax Offset Monies." Sends to custodial parent by regular mail. Retains a copy for SPU file. Forwards a copy to appropriate regional office. Diaries for reply on 13th calendar day.
 - a. If contact is made, discusses repayment terms with custodian. Prepares and sends form CS-901.2B, "Non-AFDC Repayment Agreement, " and form CS-901.2C, "Promissory Note." Diaries for return on the 13th calendar day.
 - b. If time expires and no contact is made, prepares and sends form CS-901.3B, "Demand for Payment", form CS-901.2B, "Non-AFDC Repayment Agreement," and form, CS-901.2C, Promissory Note." Diaries for return on 13th calendar day.
3. If the second diary date expires with no contact from the obligee, skips to step 6.
4. If signed and notarized Repayment Agreement and Promissory Note are returned, retains copy for SPU. Forwards original to the appropriate regional office.
5. Monitors for payment until the debt is paid in full. If payments are not received in accordance with the terms of the Repayment Agreement, proceeds to step 6.
6. If obligee refuses to sign form CS-901.2B or CS-901.2C, or fails to make the necessary payments after signing the forms, consults Supervisor concerning the advisability of pursuing civil court remedies.

SEE FOLLOWING PAGES FOR SAMPLES

Section:

RETAINED SUPPORT

Subject:

Tax Offset
Adjustment RepaymentsDEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISIONSTAN STEPHENS
GOVERNORJULIA E. ROBINSON
DIRECTOR

STATE OF MONTANA

FAX • 406) 444-1970

P.O. BOX 5915
HELENA, MONTANA 59604

Date: _____

Dear _____;

This office sent you a warrant for \$_____ on _____, 19____. The Child Support Enforcement Division collected that child support payment by intercepting the absent parent's federal income tax refund.

You agreed to repay any child support from a tax offset which was later adjusted. Adjustments are necessary if the absent parent files an amended tax return. An adjustment may also be necessary if the CSED misposted the money to the case. An adjustment has occurred in the case. You must repay \$_____ to the Child Support Enforcement Division.

Please make your cashier's check or money order payable to Child Support Enforcement Division, and send it to:

REPAYMENTS--CSED
Box 214, Capitol Station
Helena, MT 59620

Be sure to mark the check or money order as "Repayment for Tax Offset."

If you fail to repay this money, it may be necessary to begin legal action against you. Your immediate attention to this matter is necessary and appreciated.

Please contact me within 10 days from the date of this letter to make payment arrangements.

Sincerely,

Child Support Enforcement Program

cc: _____ Regional Office

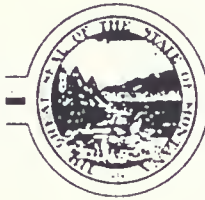
CS901.3A

"Working Together To Empower Montanans"

Section:

RETAINED SUPPORT

Subject:

Tax Offset
Adjustment RepaymentsDEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISIONSTAN STEPHENS
GOVERNORJULIA F. ROBINSON
DIRECTOR

FAX # (406) 444-1970

STATE OF MONTANA

P.O. BOX 100
HELENA, MONTANA 59610

Date:

Dear _____,

Our investigation shows that you received child support monies from the federal income tax refund of the absent parent. You must repay this money because:

- ☐ it was posted incorrectly to the case, and is due to someone else
- ☐ an adjustment has been made on the return

The law requires the Child Support Enforcement Division to recover this money from you. We now demand repayment of the amount described below.

DATE(S) OF PAYMENT(S): _____

TOTAL AMOUNT DUE CSED: _____

If you wish, you can pay the total amount immediately. Send a cashier's check or money order for the full amount to:

REPAYMENTS--CSED
Box 214, Capitol Station
Helena, MT 59620

Please be sure to mark the check or money order as "Repayment for Tax Offset."

You can also choose to repay the full amount within 60 days, or to make monthly payments. If this is your choice, you MUST sign the enclosed "Non-AFDC Repayment Agreement" AND "Promissory Note."

Send the signed repayment agreement and note to the "REPAYMENTS" address within 10 days from the date of this letter.

Please contact me if you have questions about our repayment procedure. You may write me at the above "Repayments" address or telephone me at (406) 444-2431.

CS901-3B

"Working Together To Empower Montanans"

Section:

RETAINED SUPPORT

Subject:

Tax Offset
Adjustment Repayments

You must repay this money. If you fail to repay, it may be necessary to begin legal action against you. Your immediate attention to this matter is necessary.

Sincerely,

Child Support Enforcement Program



Department of Revenue

SECTION:

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Terms

CHILD SUPPORT ENFORCEMENT

ABSENT PARENT	See RP (responsible person).
ABSTRACT OF JUDGMENT	An official certified copy of a court judgment that states the names of the parties in the case, the amount of the judgement, the judge who rendered judgment, or the court in which it was rendered.
ACKNOWLEDGED FATHER	The natural father of a child born out of wedlock for whom paternity has been established by admission or stipulation.
ACT	Social Security Act.
ACTION	An ordinary proceeding in a court by which one party prosecutes another for the enforcement.
ADJUDICATION	The entry of a judgment or decree by a judge after all claims of the parties have been heard and a verdict returned.
ADMINISTRATIVE ENFORCEMENT PROCEDURES	A quasi-judicial system set up in a State agency by statute for the purpose of enforcing child support obligations. Administrative hearings officer may determine duty, set obligation amounts, authorize execution, and take other steps as outlined by State law. Remedies are similar to those used in courts.
ADMINISTRATIVE SUPPORT DETERMINATION BASED ON ABILITY TO PAY	A non-court-ordered, legally enforceable obligation based on the income and resources of the responsible person (RP) as applied to the Minimum Scale of Contributions.
ADMINISTRATIVE SUPPORT DETERMINATION BASED ON PA PAID	A non-court-ordered, legally enforceable obligation based on the amount of the public assistance grant in IV-A cases.
ADMISSION	A voluntary or implied acknowledgment, confession, or concession of the existence of a fact, or of the truth of an allegation, made by a party to the case.

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AFFIDAVIT	A written or printed declaration or statement of facts, made voluntarily, and confirmed or sworn to by the oath or affirmation of the party making it, taken before an officer having legal authority to administer such oath or affirmation such as a notary public.
AGENT	A person authorized by another to act for him or her; a substitute or a deputy, appointed by a person and given discretionary power to act in his behalf.
AFDC (Aid to Families with Dependent Children)	A category of public assistance paid on behalf of children who are deprived of one or both of their parents by reason of death, disability, or continued absence (including desertion) from the home.
AID	Aid to Families with Dependent Children, emergency assistance, or AFDC-Foster Care.
ALLEGATION	The assertion, declaration, or statement of a party to a case, made in pleading, setting out what is expected to be proved.
ANSWER	A pleading by the defendant in a civil case that contests or admits the plaintiff's allegations of facts set forth in the complaint.
APPEAL	The request of a party to a higher court to review the rulings made in a lower court for possible errors that would justify overruling the lower court's judgment and perhaps granting a new trial.
APPLICANT	The caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.
ARREARAGE	The total unpaid support obligation owed by a responsible person.
ASSIGNMENT OF RIGHTS	The procedure whereby a recipient of public assistance agrees to turn over to the State any right to support paid on behalf of such recipient or the recipients' dependent children.
ASSISTANCE	A welfare money payment. For support enforcement purposes, the term "assistance" will mean AFDC.
AUTHORIZED PERSON	(PL 93-647, Sec. 453(C)(1)(2)(3))- (1) Any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child

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support (including, when authorized under the State plan, any official of a political subdivision); (2) The court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and (3) The resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aide under Part A of this title) (as determined by regulations prescribed by the secretary) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child.

AVERMENT	A positive statement of facts in opposition to an argument or inference.
BOND	The securing of an obligation by payment of a sum of money.
CARETAKER	A parent, relative, or guardian who maintains care and control of the dependent children and whose needs are included with the children's in a public assistance payment under the AFDC program.
CERTIFICATE OF SERVICE	A signed writing by which a person who served process upon a defendant vouches that the service was performed.
CERTIFY	To vouch formally for the accuracy of facts by a signed writing.
CHATTEL	An article of personal property.
CIRCUMSTANTIAL EVIDENCE	Evidence directed to the surrounding circumstances, whereby existence of the principal fact in issue may be inferred by the exercise of logical reasoning.
CITATION	(1) An order or summons by which a defendant is notified of judicial proceedings against him or her, and which directs him to appear before a magistrate or judge at a specific time. (2) A reference to the text of a statute, ordinance, or judicial opinion by the use of identifying numbers such as section, volume, or page numbers.
CLAIM	To demand as one's own; to assert, state, or insist; an allegation made in an action at law.
CODE	A collection of the state laws published in one or more volumes, systematically arranged into chapters and sections, with a table of contents and index.
COHABITOR	An individual who lives in the home as husband or wife with the natural or adoptive parent of an AFDC child or children.

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COLLATERAL FACTS	Facts outside of or not directly connected with the principal matter in dispute.
COMITY	The practice by which courts of one State follow the decision or recognize judgments of another although they are not bound to do so; a willingness to grant a privilege to another State out of courtesy, deference, and good will.
COMMON LAW	Case decisions that serve as legal principles where no statutes govern.
COMPANION CASE	Cases in which there are multiple responsible persons for a single recipient or cases in which one responsible person is associated with more than one IV-A case.
COMPLAINANT	Person who seeks to initiate court proceedings against another person. In a civil case the complainant is the plaintiff; in a criminal case the complainant is the State.
COMPLAINT	The formal written document filed in a court whereby the person initiating the action sets forth the names of the parties, the allegations, and the request for relief sought; the initial pleading.
CONTEMNER	A person who has committed contempt of court.
CONTINUANCE	The postponement of a hearing or trial pending in a court to a subsequent day.
COOPERATE	AFDC applicants' appearance at State or local agencies to provide information, to appear as witnesses at court or other hearings providing information, or complying with assignment regulations.
CORROBORATING EVIDENCE	Evidence supplementary to that already given and tending to support or strengthen it.
COUNSEL	Attorney or attorneys for a party.
COURTS OF RECORD	Courts whose proceedings are permanently recorded by a court reporter. Courts not of record are those of lesser authority whose proceedings are not permanently recorded.
CREAMING THE CASES	Working those cases that have a high probability of payoff within a short period of time.
CREDIBILITY	The quality in a witness that renders his or her testimony worthy of belief.

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CROSS- EXAMINATION	The examination of a witness by the opposing party to test the truth of his or her testimony, to further develop it, or for other purposes.
DAMAGES	The loss, detriment, or injury suffered by a person through the unlawful act or negligence of another.
DEFAULT	The failure of a defendant to file an answer or appear in a civil case within 20 days after having been properly served with a summons and complaint.
DEFENDANT	The person against whom a civil or criminal proceeding is begun.
DEPARTMENT	Federal--Department of Health and Human Resources. (Formerly the Department of Health, Education, and Welfare.) State--Department of Revenue.
DEPENDENT CHILD	A child who receives aid under the AFDC program in IV-A cases; a child under the age of 18 in non-PA cases.
DEPOSITION	The testimony of a witness taken before trial, reduced to writing and duly authenticated, and intended to be used at the trial.
DESERTED OR ABANDONED CHILD	Any child whose eligibility for AFDC is based on continued absence of a parent from the home (e.g., a child from a broken home or a child born out of wedlock).
DETAINDER	(Unlawful detainer)--The act of withholding real estate or chattels from a person lawfully entitled to possession of them.
DIRECT EXAMINATION	The first interrogation or questioning of a witness by the party on whose behalf he or she is called.
DIRECTOR (IV-D)	Director, office of Child Support Enforcement--Secretary's designee to administer the child support enforcement program under Title IV-D.
DISCHARGE IN BANKRUPTCY	The release of a person who has been adjudged bankrupt from the obligation to pay his or her former debts.
DISCLAIMER	The renunciation of an interest, right, or obligation imputed to a person or alleged to be his or her; a vendor's disavowal of any promises relating to the quality of the item sold.
DISCOVERY	The disclosure by a party of facts, titles, documents, or other things in his exclusive knowledge or possession, which are necessary to the party seeking the information as a part of a case or action pending in a court.

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DESCRETION	A liberty or privilege allowed to a judge, within the confines of right and justice, but independent of narrow and unbending rules of law, to decide and act in accordance with what is fair, as determined upon the peculiar circumstances of the case, and as discerned by his or her personal wisdom and experience, guided by the spirit and principles of the law.
DISPOSABLE EARNINGS	That part of the earnings of an individual remaining after the deduction of any amounts required by law to be withheld.
DISTRAINT, SEIZURE, AND SALE	A remedy for enforcing support payments. Such procedure involves the direct seizure of the debtor's property to secure appearance in court or to assure performance of some duty. In some cases the seizure may be followed by sale to pay the debt.
DOCKET	A formal brief record of proceedings in court; minute entries in case files; the court calendar. Some courts refer to filing a paper with the court as docketing.
DUE PROCESS OF LAW	The conduct of legal proceedings according to those rules and principles which have been established in our system of law for the enforcement and protection of private rights. Its most essential elements are a court with proper jurisdiction over the subject matter and the defendant, notice to each party, the opportunity for each party to present evidence and to challenge the opposing party's evidence, orderly procedures, and a neutral and unbiased trier of fact who determines the facts and decides the issues only on the basis of the persuasiveness of relevant evidence properly admitted. Due process is a safeguard against unreasonable, arbitrary, and capricious decisions.
EMANCIPATE	To release from parental care and responsibility.
EA (emergency assistance)	A public assistance payment in emergency situations (natural disaster or fire) out of AFDC funds to needy families with children who may not meet all of the AFDC eligibility criteria. Such cases are not considered IV-A cases and are not referred to support enforcement.
ET AL.	(Lat.) An abbreviation of et alii, meaning "and others."
ET SEQ.	(Lat.) An abbreviation for et sequentes, or et sequentia, meaning "and the following."
EX PARTE	Done for, in behalf of, or on the application of one party, and without notice to or participation by any adverse party.

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EX REL.	(Lat.) An abbreviation of ex relatione. Upon relation or information.
EXECUTION OF JUDGMENT	An order that puts a final judgment of court in a civil case into effect by the court, commanding a sheriff to take certain actions such as seizing money from a defendant's bank account to pay a judgment won by the plaintiff in a trial.
EXHIBIT	A writing or other article marked for identification and shown to the trier of fact during a court proceeding.
FEDERAL PARENT LOCATOR SERVICE (FPLS)	A service operated by the office of Child Support Enforcement to assist the States in searching for and locating responsible persons for the purpose of obtaining child support payments.
FELONY	Generally, a crime of a more serious nature than those designated as misdemeanors. Usually an offense punishable by imprisonment in a penitentiary rather than in a county or city jail as in the case of misdemeanors. A serious crime as opposed to a misdemeanor which is usually an infraction of statutory law only.
FORECLOSURE	An administrative procedure for enforcing support payments. A judicial procedure involves a forced sale of real or personal property of the debtor by a court order.
FRAUD	False statements made to state officials with the intent of wrongfully receiving public assistance thereby.
IV-A	Title IV-A of the Social Security Act is that portion of the Federal law covering the public assistance program.
IV-D	Title IV-D of the Social Security Act is that portion of the Federal law covering the support enforcement program.
IV-D AGENCY	A single and separate organizational unit in a State that has the responsibility for administering the State plan under Title IV-D of the Act. In Montana, Child Support Enforcement Bureau.
GARNISHEE	The person upon whom a garnishment is served; (verb) to institute garnishment proceedings.
GARNISHMENT	A legal proceeding whereby a person's (defendant's) property, money, or credit in the possession of or under the control of a third person (garnishee) is withheld from the defendant and applied to the payment of the defendant's debt to the plaintiff.
GRANT AMOUNT	The amount of public assistance granted to a family.

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Terms

GUARDIAN	See caretaker.
GUARDIAN AD LITEM	A guardian appointed by a court of justice to prosecute or defend for an infant in any suit to which he may be a party.
HEW	Department of Health, Education, and Welfare. The Department no longer includes education, and the name has been officially changed to the Department of Health and Human Resources.
INADMISSIBLE	An adjective describing evidence or testimony which, under the established rules of evidence, cannot be considered by the trier of fact.
INCARCERATION	Imprisonment; confinement in a jail or penitentiary.
INCRIMINATE	To charge with crime; to expose to an accusation or charge of crime; to involve oneself or another in a criminal prosecution or the danger thereof, as in the rule that a witness is not bound to give testimony which would tend to incriminate him.
INDEMNITY	A collateral assurance by which one person agrees to assure another against loss or consequences.
INDIGENT	In a general sense, one who is needy or poor. In a criminal prosecution, an indigent defendant may be entitled to have an attorney appointed to represent him or her at no cost.
INITIAL ENFORCEMENT TECHNIQUES	Methods that may be used to convince an absent parent to pay child support without involving a court of law; usually centers around personal contact and persuasive arguments.
INITIATING STATE	The State in which a URESA proceeding is commenced and where the obligee is located.
INTEREST	(1) A right to have an advantage accruing from something, such as a title to a share of ownership. (2) A rate of compensation for the use or forbearance of money, such as interest on a loan; a rate of compensation which must be paid by a judgment debtor. (3) A relation to the matter in controversy, in the nature of a possible gain or loss, which might incline a person such as a juror, witness, or judge to favor one party to a suit.
INTERROGATORIES	A set or series of written questions.
JUDGMENT	The official decision or finding of a court upon the respective rights and claims of the parties to an action; also

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known as a decree or order and may include the "findings of fact and conclusions of law."

JUDICIAL
ENFORCEMENT
REMEDIES

Action through the court for enforcing support obligations. They include securing an order and execution remedies.

JUDICIAL
REVIEW

A reconsideration or review by a higher court of a case tried in a lower court. Used especially to describe the examination of a case by an appellate court. The review is usually restricted to material error and abuse of judicial discretion.

JURISDICTION

The express constitutional or legislative determination of what types of cases may be heard by certain courts. Before a court has jurisdiction, i.e., in order for the court to invoke its authority to try a case, the legislative criteria prescribing the class of cases which may be heard must be satisfied. This criteria encompasses fixed geographical boundaries, the amount of money involved in a civil action, those parties which may lawfully be brought before the court, the types of civil claims which may be acted upon, and those criminal proceedings which may be conducted.

Concurrent Jurisdiction--The authority of several different courts to deal with the same subject matter.

Jurisdiction of the person is the court's power to subject parties in a particular case to decisions and rulings made in the case.

Subject-matter Jurisdiction means jurisdiction over the class of cases to which a particular case belongs.

General Jurisdiction--Jurisdiction extending to all cases without any limitation as to subject matter.

Limited Jurisdiction--Jurisdiction extending to only those classes of cases and proceedings specifically granted by statute. Common examples are courts with jurisdiction over all civil cases where the amount in controversy is less than a specified amount, or jurisdiction to try all misdemeanors but to conduct only preliminary hearings of felonies.

Territorial Jurisdiction limits the court's authority to cases arising, or persons residing, within a defined territory, such as a county or a judicial district.

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LAW ENFORCEMENT OFFICIALS	District attorneys, attorneys general and similar public attorneys, and prosecutors and their staffs.
LEGAL FATHER	A man who is recognized by law as the male parent of another person.
LIEN	An encumbrance upon real or personal property for the satisfaction of a debt.
LITIGATE	To dispute or contend in form of law; to carry on a suit; to try a case in court.
MANDAMUS (writ of)	(Lat.; we command) This is an order issued from a court to command performance of specific duties which the complainant is entitled to have performed. It is generally directed to government officials or to a court of lesser jurisdiction.
MARGINAL COST	The amount added to cost (expenditures) which results from processing one more case.
MARGINAL REVENUE	The amount added to revenue (collections) which results from processing one more case.
MATERIAL	(Referring to evidence offered at a trial) Important; more or less necessary; having influence or effect; going to the substantial issues in dispute.
MISDEMEANANT	A person guilty of a misdeameanor.
MISDEMEANOR	Offenses lower than felonies and generally those punishable by a fine or imprisonment other than in a penitentiary of less than 1 year.
MISTRIAL	An invalid trial that cannot stand in law because of a disregard of some fundamental procedure.
MITIGATING CIRCUMSTANCES	Facts, conditions, or circumstances which do not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability or blame.
MORAL TURPITUDE	Conduct contrary to justice, honesty, modesty, or good morals.
MOTION	An application to a magistrate or judge for an order or ruling.

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Terms

MOTION TO STRIKE	A motion to the judge requesting that objectionable testimony of a witness be ruled inadmissible, i.e., that the judge strike the testimony from the record or instruct the jury to strike a statement from their consideration.
NEGLIGENCE	The omission to do something which a reasonable man or woman, guided by those considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent person would not do, which causes injury to another.
NET RETURN	Amount of collections less amount of expenditures.
NOLO CONTENDERE	(Lat.; I will not contest it.) A plea by the defendant in a criminal case which has the effect of admitting guilt, but which does not bar him or her from denying liability in a civil suit brought upon the same facts. This is not an acceptable plea in many courts.
NON-AFDC ENFORCEMENT CASES	IV-D cases resulting from application for support services by individuals not otherwise eligible for such services under the IV-A program.
NOTARIZE	The administration of an oath to a person by a public officer who then attests and certifies, by his or her signature and official seal on the document, that the person who signed the document was, in fact, the person whose name appeared thereon.
NOTICE	The document which (1) makes an administrative support determination legally enforceable in non-court-ordered cases, and (2) makes legal the use of the administrative enforcement remedies in court-ordered cases.
OBJECTION	The act of a party who takes exception to some matter or proceeding in the course of a trial or hearing.
OBLIGATION	The amount and frequency of money which is to be paid as support by the responsible person.
OBLIGEE	Under URESA laws any person to whom a duty of support is owed.
OBLIGOR	Under URESA laws, any person owing a duty of support against whom a proceeding for the enforcement of same is commenced.
OCSE	Office of Child Support Enforcement, HHS.
OFFICE	Office of Child Support Enforcement with the responsibility for the administration of the program under this title.

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OPENING STATEMENT OF COUNSEL	A statement by a party or his attorney at the beginning of a trial whose purpose is to advise the jury of facts which will be relied upon and of issues in the case in order to give the trier of fact a general picture of the facts.
OPINION	The statement by a judge or appellate court of the decision reached in regard to a case tried before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based.
ORDER	Every direction of a magistrate or judge to a person, made or entered in writing, and not included in a judgment.
ORDER TO WITHHOLD AND DELIVER	An administrative procedure for enforcing support payments. Such procedure orders a third party who has control over real or personal property belonging to the debtor to turn that property over to the agency.
ORDINANCE	A rule established by authority; a law or statute. In the more common usage, the term is used to designate the enactments of the legislative body of a municipal corporation, such as a city, town, or village.
OTHER LEGAL PROCESS	The procedure whereby the State has the authority to establish a legal support obligation without the necessity of court involvement.
OVERRULE	To refuse to sustain, or recognize as sufficient, an objection made in the course of a trial.
OUT-OF-STATE CASE	Any IV-D case in which either the recipient or the RP resides outside the State.
PATERNITY	Fatherhood.
PAYEE	Caretaker other than mother or father of child.
PECUNIARY	Relating to money. A pecuniary interest would be in a financial interest; i.e., a person may gain or lose money because of some event, action, or judgment in a court case.
PENAL	Relating to punishment.
PENDENTE LITE	During litigation; during the actual progress of a suit.
PERSONAL PROPERTY	Any property (such as cash, liquid assets, automobiles, etc.) other than defined as real property.

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PERSONAL SERVICE	Delivery of a writ, summons, or notice to the person named therein by handing it to him.
PLAINTIFF	A person who brings an action; the party who complains or sues in a civil case.
PLEA	The answer by the defendant in a criminal case to the charge brought against him or her.
PLEADING	Written allegation filed with the court of what is affirmed on one side and denied on the other, disclosing to the court or jury the issue between the parties.
PLEADING PRACTICE	The process performed by the parties to an action by alternately presenting written statements of their contention. Each pleading is responsive to that which precedes, and each serves to narrow the field of controversy until the evolvement of a single point, affirmed on one side and denied on the other (called an "issue") on which the parties then go to trial.
POCKET PART	The annual supplements to the State Code or similar publications which report the latest statutes or cases to make the books current. They are inserted in the back cover of each volume.
PRAYER	A request contained in a pleading that the court will grant relief requested.
PRECEDENT	An adjudged case or decision that serves as an example or authority for an identical or similar case or similar question of law.
PRELIMINARY HEARING OR EXAMINATION	The hearing or examination given by a judge, to a person accused of a crime, to ascertain whether there is probable cause to require the commitment and holding to bail of the person accused. It is not a trial for the determination of the accused guilt or innocence. A preponderance of evidence is all that is required to sustain the burden of proof, not beyond a reasonable doubt. The accused usually does not testify, and usually uses the hearing to test the strength of the State's case.
PREPONDERANCE OF THE EVIDENCE	Evidence with a superiority of persuasion. A judge cannot properly render verdict upon evidence in favor of the one having the burden of proof, unless such evidence overbears, in some degree, the persuasiveness of the other side's evidence. This is the burden required in civil cases. A higher standard is required of the prosecution in a criminal case.

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PRIMA FACIE EVIDENCE	Enough evidence to establish the facts testified to in the absence of any rebutting or contradictory evidence. Such evidence places the burden of coming forward with better evidence on the other party.
PROBABLE CAUSE	An apparent state of facts found to exist which would induce a reasonably intelligent and prudent man to believe, objectively, that the accused person committed the crime charged, or when issuing a search warrant that evidence relating to a crime is located in a particular place.
PROBATION	Allowing a person convicted of some offense to go at large, under a suspension of sentence, during good behavior, and under the supervision of a probation officer.
PROHIBITION	An order issued by a court halting the proceedings of a lower court or agency because the lower court or agency has exceeded its jurisdiction.
PROMPT NOTICE	Written notice to IV-D by IV-A within 2 working days of the furnishing of aid including a copy of the AFDC case record or all relevant information as prescribed by the child support agency.
PRO SE	(Lat.) For himself; in his or her own behalf; without a lawyer.
PROSECUTOR	A public official who prosecutes a criminal case in the name of the government.
PROSECUTRIX	A female prosecutor.
PA (public assistance)	For support enforcement purposes, public assistance will mean a money payment made under the ADC or ADC-FC programs.
PUNITIVE DAMAGES	Often a large money judgment against a defendant to pay the plaintiff more than his or her actual loss, intended to punish the defendant for his willful misconduct and to deter the defendant and other persons from similar wrongful conduct in the future.
PF (putative father)	Alleged father. A person who has been named as the father of a child born out of wedlock, but for whom paternity has not been established.
QUASH	To vacate, annul, or avoid a court order or process especially to annul a summons or indictment.

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RATE OF RETURN	The ratio of dollars collected to dollars spent.
REAL PARTY IN INTEREST	The party having the right to relief in an action; not an assignee.
REAL PROPERTY	Property such as land, tenements, and buildings which are permanent, fixed, and immovable.
REASONABLE	Fit and appropriate to the end in view (syn.: rational, honest, equitable, fair, suitable, moderate, tolerable).
REASONABLE DOUBT	The state of mind of the judge in a criminal trial who does not have an abiding conviction to a moral certainty that the evidence has proved the defendant's guilt.
REBUTTAL	The stage in a trial where a party introduces new evidence to contradict the evidence and affirmation defenses presented by the opposing party.
RECIPIENT	A person receiving public assistance under the IV-A program; includes the caretaker relative, children, and any other individual whose needs are considered in determining the amount of assistance.
RECOGNIZANCE	A security, similar to a bond, which the court may order the RP to pay to insure that the obligation owed will be met.
RECORD	A precise written history of a court action from commencement to termination designed to remain as permanent evidence of the matters to which it relates.
REDIRECT EXAMINATION	Examination of a witness by the party who called the witness, conducted after cross-examination, to rehabilitate the witness or amplify matters discussed in cross-examination.
REGIONAL OFFICE	The Regional Office of Child Support Enforcement: Federal Regional Office is in Denver, Colorado; State Regional Offices are in Great Falls, Billings, Butte, and Missoula, Montana.
REGULATION	A rule or order promulgated by a governmental administrative agency.
RELEASE	The relinquishment of a right or claim against a person; an affirmation defense in a civil case.
RELEVANCY	Quality of evidence which bears directly on a fact in issue and tends to prove the existence or nonexistence of a fact.

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REMAND	To send back to another court for further action.
REMOVAL OF CAUSES	Transfer of a case for trial from one court to a court of different jurisdiction or one judge to another.
REPORTER	(1) A person who records court proceedings for the purpose of preparing an official record thereof; (2) a commercial publication that contains judicial opinions, such as the Southeastern Reporter published by West Publishing Co.
RESIDENT PARENT	The parent with whom a child resides; also called custodial parent.
RESPONDING STATE	Under URESA laws, any State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced.
RP (Responsible Parent)	Any person obligated under law for the support of a dependent child.
RETURN	A document filed by a person making personal service upon a party that swears to the fact of service and to the surrounding circumstances.
RULE	A standard, guide, or regulation either promulgated by an entity possessing supervisory authority or accepted by tradition as principle of law.
SATISFACTION	The discharge of an obligation by paying a party what was awarded to him by the judgment of a court.
SECRETARY	Secretary of Health, and Human Resources. (Formerly Health, Education, and Welfare).
SEIZURE	The taking of an object from its possessor or custodian by a law enforcement officer.
SERVICE BY PUBLICATION	Service of a summons or other process upon an absent or nonresident defendant, or an unincorporated business association defendant, by publishing the same in a designated newspaper, with such other efforts to give the defendant actual notice of a case pending against him. Usually this procedure is specifically set forth and authorized by a statute. Only the court can authorize such service and will do so only when personal service has failed.
SERVICE OF PROCESS	The delivery of a writ, summons, or other notice to the party to whom it is directed for the purpose of obtaining personal jurisdiction over and notice to that party.

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SHOW CAUSE	A court order directing a person to appear and bring forth such evidence as one has to offer reasons why the remedies stated in the order should not be confirmed or executed. A show cause order is usually based on a motion and affidavit asking for relief.
SOLO PARENT	See Caretaker.
STATE	The individual States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.
STATE PLAN	The State plan for child support under section 454 of the Act.
SPLS (State Parent Locator Service)	The section of the agency that queries other interstate and intrastate agencies for purposes of locating responsible persons under the IV-D program.
STATUTES	Formal written law found in code books.
STATUTE OF LIMITATIONS	A legislative enactment that prescribes the period of time within which a civil suit must be brought upon a certain claim. In criminal law, the statute of limitations determines the time within which the State must initiate a prosecution for an offense.
STATUTORY AGENT	A person appointed by statute, often the Secretary of State, to receive service of process for nonresident corporation defendants.
STAY	An order by a magistrate or judge stopping court proceedings.
STIPULATION	An agreement between parties through their attorneys, if any, respecting business before the court. Most stipulations are required to be in writing.
SUBPOENA	The legal process ordering a witness to appear in a certain court at a specified time to testify.
SUBPOENA DUCES TECUM	The legal process by which the court commands a witness who has in his possession or control some specified document or item that may be pertinent to the issues of a pending controversy to produce it at trial or some other official hearing.
SUBROGATE	The substitution of one for another, as with a creditor, so that the new creditor succeeds to the former's rights.

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SUBSTANTIVE LAW	Law that governs the rights, duties, and liabilities of the parties and defines the issues which the evidence must prove.
SUBSTITUTED SERVICE	Any form of service of process other than personal service, such as service by mail or by publication in a newspaper; service of a writ or notice on some person other than the one directly concerned; for example, his or her attorney of record, who has authority to represent him or her or to accept service for him.
SUGGESTED EXECUTION	A levy on a person's present or past wages to satisfy judgment.
SUGGESTED MINIMUM SCALE OF CONTRIBUTIONS	The scale used to establish the expected monthly support obligation which a responsible person must pay on behalf of his dependents. The scale takes into consideration the income, resources, and extraordinary expenses of the parent; however, this scale does not exist in all States.
SUM CERTAIN	A specific amount of money; usually refers to the amount of debt.
SUMMONS	A notice to a defendant that an action against him has been commenced in the court issuing the summons and that a judgment will be taken against him if he fails to answer the complaint within a specified time.
SUPPORT ENFORCEMENT HEARING OFFICER	An impartial person authorized by the agency to hear evidence and render decisions regarding proper application of policy and procedure as a result of the appeal process; a quasi-judicial officer in the State Administrative Hearing system.
SURETY	A person who incurs an obligation to pay money on behalf of another person in the event of the occurrence of a specified contingency.
SUSPENDED SENTENCE	A sentence which is not put into effect, although since it may take effect at a later date, it is not considered vacated.
SUSTAIN	To support or uphold a verdict, decision, objection, etc.
TESTIMONIAL EVIDENCE	Proof offered by the testimony of witnesses; i.e., oral evidence, as distinguished from proof by writings, demonstrations, or articles.
TITLE	Title IV-D of the Social Security Act.

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TORT	A private or civil wrong or injury to another person, independent of a contract. Three elements of every tort action are: existence of a legal duty from defendant to plaintiff, breach of duty, and damage as a proximate result.
TRIAL DE NOVO	A new trial or retrial held in a higher court in which the whole case is gone into as if no trial had been held in a lower court.
URESA (Uniform Reciprocal Enforcement of Support Act)	A uniform law which sets forth reciprocal legislation concerning the enforcement of support between the States. All States have passed a form of URESA.
UNREASONABLE SEARCH AND SEIZURE	An examination or inspection by an agent of the government without authority of law, of one's premises or person and the seizure of some evidence of guilt to be used in prosecution for crime.
VENUE	The county or other geographical division in which an action or prosecution is brought for trial.
VERACITY	Truthfulness; the power of conveying or perceiving truth.
VERDICT	The formal decision made by a trial jury as to matters of fact submitted to it.
WAGE ASSIGNMENT	The right of a person to transfer through automatic deductions from his or her wages money to pay some debt such as child support; the assignment may be voluntary or involuntary. In a voluntary assignment the wage earner agrees to such a withholding. In an involuntary assignment the court orders the wage earner to assign wages or suffer a contempt finding.
WAIVER	The intentional and voluntary relinquishment of a known legal right.
WARRANT	A writ issued by a judicial officer commanding and granting authority to a peace officer to perform some act.

Arrest Warrant--A written order issued and signed by a judge and directed to a peace officer or some other official commanding him to arrest a person named, who is accused of an offense.

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Search Warrant--A writ issued by a judge to a sheriff or other law enforcement officer, commanding him to search certain premises and seize certain items and bring them before the issuing judge.

WARRANT OF
DISTRRAINT

An authority issued to a collector of taxes by the legislature empowering the collector to collect the taxes extended on the assessment records, and to make distress and sale of goods or land in default of payment. In Montana, the Warrant of Distrainment authority has been extended by the legislature to the Department of Revenue's collection of child support.

WILLFUL

Done intentionally as distinguished from carelessly, inadvertently, or accidentally.

WRIT

An order issuing from a court and requiring the performance of a specified act, or giving authority and permission to have it done.

WRIT OF
ATTACHMENT

A court order employed to enforce obedience to an order or judgment of the court.

1. A warrant for the arrest of a person who is in contempt of court (body attachment or bench warrant).
2. A writ ordering the sheriff to seize the defendant's chattels or bank account in a civil case to prevent the defendant from hiding it or disposing of it before trial.
3. A writ of fieri facias.

WRIT OF EXECUTION

A writ to put in force the judgment or decree of a court.

WRIT OF
FIERI FACIAS

A court order directing a sheriff to seize money or personal property of a defendant to satisfy a money judgment for that property held by the plaintiff. Most commonly, it is used to evict tenants from landlord's property.

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